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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 13, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2010–09 of June 2, 2010

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the "Act"), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the *Federal Register*.

This suspension shall take effect after transmission of this determination and report to the Congress.

THE WHITE HOUSE,
Washington, June 2, 2010

[FR Doc. 2010–14422
Filed 6–11–10; 8:45 am]
Billing code 4710–10–P Folio: 852

Rules and Regulations

Federal Register
Vol. 75, No. 113
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AL93

Absence and Leave; Definitions of Family Member, Immediate Relative, and Related Terms

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to modify definitions related to *family member* and *immediate relative* in 5 CFR part 630 and to add other defined terms, for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These changes implement Section 1 of the President's June 17, 2009, Memorandum on Federal Benefits and Non-Discrimination and help ensure that agencies consider the needs of a diverse workforce and provide employees the broadest possible support to help them balance their work, personal, and family obligations.

DATES: *Effective Date:* These regulations are effective on July 14, 2010.

Applicability Date: These regulations apply on the first day of the first applicable pay period beginning on or after July 14, 2010.

FOR FURTHER INFORMATION CONTACT: Anne Vonhof by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 14, 2009, the U.S. Office of Personnel Management (OPM) issued proposed regulations to modify definitions in 5 CFR part 630, subparts B, H, I, J, and K, related to *family member* and *immediate relative* for the use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These proposed regulations were published in response to Section 1 of the President's June 17, 2009, Memorandum for the Heads of Executive Departments and Agencies on Federal Benefits and Non-Discrimination (*http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-on-Federal-Benefits-and-Non-Discrimination-6-17-09*), to promote consistent application of policy across the Federal Government, and to allow the Federal Government to serve as a model employer. When implemented, these regulations will help ensure that agencies consider the needs of a diverse workforce and provide employees with the broadest support possible to help them balance their work, personal, and family obligations. As part of OPM's continuing efforts to support the needs of the Federal workforce during times of sickness, funerals, and medical or other emergencies, we are making the definitions of *family member* and *immediate relative* more explicit to include more examples of relationships that are covered under the phrase "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." These examples include stepparents and stepchildren, grandparents, grandchildren, and same-sex and opposite-sex domestic partners. In addition, OPM's final regulations define the terms *committed relationship, domestic partner, parent,* and *son or daughter.* Please note that the new definitions do not apply to the Family and Medical Leave Act (FMLA). The situations in which an employee can invoke FMLA leave and the individuals for whom an employee can provide care under FMLA are specified in law. The proposed regulations are available at *http://edocket.access.gpo.gov/2009/pdf/E9-22030.pdf.*

The 60-day comment period ended on November 13, 2009. A total of 74 comments were received—4 from agencies, 3 from labor organizations, 2 from professional organizations, and 65 from individuals. An overwhelming majority of the comments were supportive of the proposed rule. We received 52 comments in support of the proposed rule, with only 9 in opposition. A summary of the comments and concerns received and our responses follow.

Definitions of Family Member and Immediate Relative

Overall, the response to our changes to the definitions of *family member* and *immediate relative* was very positive. In the following paragraphs, we respond to the comments and concerns that we received on the proposed rule. (Throughout this **SUPPLEMENTARY INFORMATION,** all discussion of suggested changes to the definition of *family member* and terms related to the definition of *family member* also apply to the definition of *immediate relative* and terms related to the definition of *immediate relative.* Because the following comments and responses pertain to both sets of definitions, we will not repeat the discussion for both sets.)

Addition of Domestic Partner

While the new term *domestic partner* refers to same-sex and opposite-sex relationships, the majority of comments we received concern the inclusion of same-sex domestic partners in the definition of *family member.* Most of these commenters supported the proposed rule. Many comments that we received in support of the inclusion of same-sex partners included the following points: All employees deserve the same benefits; there will be better recruitment and retention of highly qualified employees who consciously choose public service, because the benefits are equal to or better than those offered in the private sector; productivity will be enhanced due to satisfied employees; and the changes recognize a diverse workforce. Many commenters applauded the Government's attempt to treat all employees equally, without creating any "second-class employees." Several commenters stated that they have been waiting a long time for authority to use their leave benefits to care for their domestic partner, and they viewed the changes as long overdue. Other commenters appreciated the respect OPM is showing for the many Federal employees from non-traditional families by providing employees with an equal opportunity to care for their family members. Two commenters stated that

this new rule would make it unnecessary for the employee to choose between keeping his or her job or caring for a loved one.

Although the overwhelming majority of commenters supported the inclusion of same-sex domestic partners in the definition of *family member,* OPM received nine comments from individuals in opposition to all or part of this portion of the rule. The commenters were opposed to opening up leave benefits to same-sex domestic partners, believing that it disrupts the integrity of traditional families and the institution of marriage. Some did not believe in giving any rights or benefits to a "special interest group," and some were concerned about the use of additional tax dollars to cover the increase in costs that may result from this rule.

The purpose of modifying the current *family member* and *immediate relative* definitions is to promote consistency across agencies as we implement Section 1 of the President's June 17, 2009, Memorandum on Federal Benefits and Non-Discrimination across the Federal Government in the administration of Federal leave benefits. The President's memorandum states that the Secretary of State and the Director of OPM should "extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal employees where doing so can be achieved and is consistent with Federal law." Previously, OPM has permitted each agency to interpret the phrase "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship," found in the current definitions of *family member* at §§ 630.201(b) and 630.902 (a similar phrase exists in the definition of *immediate relative* at § 630.803). Although it has always been appropriate to consider same-sex domestic partners as a family relationship under the "related by blood or affinity" clause for the purposes covered under these regulations, agencies have not been consistent in their interpretation of the clause. These changes do not reflect an additional benefit provided to a "special interest group" or a fundamental change in the Government's human resources policies. On the contrary, these final regulations are meant to ensure that an employee has an entitlement to use his or her leave for purposes authorized under applicable law and regulation. Therefore, OPM believes it is appropriate to specifically include same-sex partners in the definitions of *family member* and *immediate relative* to ensure consistent application across the Federal Government. We are keeping domestic partners as part of the definitions of *family member* and *immediate relative* under 5 CFR part 630, subparts B, H, I, J, and K, for the use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer to ensure agencies meet the needs of a diverse workforce.

Parent of a Domestic Partner

We received five comments requesting the addition of a domestic partner's parent to the definition of *family member.* One commenter suggested that we change paragraph (6) in the definition of *family member* to read "domestic partners and parents thereof, including domestic partners of any individual in paragraphs (2)–(5) of this definition." Although the parent of the domestic partner is not specifically referenced in the proposed definitions of *family member* and *immediate relative,* he or she is covered under paragraph (4) of the proposed definitions of *parent* in 5 CFR §§ 630.201(b) and 630.803, which states that a parent means "(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner." Based upon the comments received, we agree to revise the definitions of *family member* and *immediate relative* to clarify that the parent of a domestic partner is included in these two definitions. Therefore, we are revising the proposed definitions of *family member* and *immediate relative* to add language to paragraph (6) to state: "domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of the definition."

Any Individual Related by Blood or Affinity

One commenter inquired why certain family members were specifically included in the proposed definitions while others fall under "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." We also received requests to add other relationships not specifically included in the *family member* and *immediate relative* definitions, such as nieces and nephews, aunts, brothers or sisters of an employee's spouse, stepsiblings and their families, and stepparents. Stepparents are included under paragraph (1) of the definition of *parent.*

We note that it would be very difficult to list each and every type of *family member* or *immediate relative,* as it would be very difficult to consider all the variations of a contemporary family. The fact that a specific relationship is not expressly included in these definitions is not meant to diminish the familial bond, or to imply that leave may not be used to care for a person with that relationship. Although we agree that any of the suggested relationships may be considered a close association with the employee that is equivalent to a family relationship, not every employee's relationship will have this close association. For example, some employees may have been raised by an aunt, while others may have never had the opportunity to meet their aunt. All of the suggested relationships can be included under the phrase "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship," if there exists a blood relationship (such as niece, nephew, aunt) or the equivalent of a family relationship (such as step family member). Also, if special legal status had been granted (*i.e.,* guardianship or loco parentis status), the relationship is covered by the definition of *parent.* OPM has broadly interpreted the "blood or affinity" clause in the past to include such relationships; agencies should continue to do so. As mentioned in the Supplementary Information accompanying the proposed rule, we have broadly interpreted the phrase to include such relationships as grandparent and grandchild, brother- and sister-in-law, fiancé and fiancée, cousin, aunt and uncle, other relatives not specified in current 5 CFR 630.201(1)–(4) and 630.902(1)–(4), and close friend, to the extent that the connection between the employee and the individual was significant enough to be regarded as having the closeness of a family relationship even though the individuals might not be related by blood or formally in law. Same-sex and opposite-sex domestic partners, as well as stepparents and stepchildren, grandparents, and grandchildren, are all examples of close relationships which were not explicitly included in the current *family member* definitions, but which may certainly be part of the affinity of an individual employee. The "blood or affinity" clause is therefore not altered by the new rule, and the examples provided are not intended to be exhaustive, but rather illustrative.

Two agencies requested that OPM include in the regulatory text the list of family relationships that have been interpreted to fall under the "blood or affinity" clause that were published in the Supplementary Information accompanying the proposed rule. One

agency stated that inclusion of this list in the regulatory text would assist agencies in understanding the intent of the phrase and allow for more consistent application of the regulations. For the reason stated in the paragraph above, we decline to include this language in the regulatory text. If it were possible to provide an exhaustive list, there would be no need for the "blood or affinity" clause.

We received a comment about employees who wish to use sick leave to care for an ill pet. While we agree that a person may have a close bond with his or her pet, an employee cannot use sick leave, or donated leave under the leave transfer programs, for this purpose. An employee must use his or her annual leave or leave without pay for this purpose. Therefore, no change is being made.

Definition of Parent

One agency pointed out that paragraph (4) of the definition of *parent* encompasses the parent of an employee's domestic partner, but not the parent of an employee's spouse, and recommended revising that paragraph to include the parent of an employee's spouse. Although the parent of the employee's spouse is not included in the proposed definition of *parent,* that person is included in paragraph (1) of the proposed definition of *family member*—"*[f]amily member* means an individual with any of the following relationships to the employee: (1) Spouse, and parents thereof." Since it is important that we make it clear that by *parent* we mean the expanded definition (adoptive, step, or foster parents, legal guardians, persons in loco parentis status) of an employee's spouse or domestic partner, we are revising paragraph (4) to read—"a parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner." The same agency recommended the addition of an employee's former spouse to paragraph (4). As there is no guarantee that former family members continue to maintain significant relationships, we believe requests for leave for such relationships are better left to a case-by-case determination using the "blood or affinity" clause. Therefore, we are not adopting this suggestion.

In the definition of *parent* at § 630.201, the first paragraph reads, "(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor." However, the definitions of *parent* at §§ 630.803 and 630.902 in the proposed regulations were missing the words, "or a person who was a foster parent of the employee when the employee was a minor." This omission was unintentional. Therefore, we are adding these words to the definitions of *parent* at §§ 630.803 and 630.902 in the final regulations.

Definition of Son or Daughter

One professional organization was very supportive of the change to replace the term "children" in the definition of *family member* with "sons and daughters" and to create a new definition of *son or daughter.* The organization also supported the inclusion of biological, adopted, and stepchildren, legal wards, and relationships where the employee stands or stood in loco parentis, and a domestic partner's son(s) or daughter(s). Another commenter endorsed the inclusion of persons who are wards or were wards, when a minor, of a legal guardian, as this supports employees who assume the care of a young person during a vulnerable period in his or her life. We received several questions about the status of certain sons or daughters. One question was whether children of a same-sex relationship would be considered an employee's son or daughter. This is specifically addressed in paragraph (4) of the *son or daughter* definition which states "[a] son or daughter * * * of an employee's domestic partner." Another question was whether adopted children would be considered an employee's son or daughter, in a same-sex or opposite-sex relationship. This is covered in paragraph (1) of the *son or daughter* definition which states, "[a] biological, adopted, step, or foster son or daughter" is considered a son or daughter of the employee. A final question was whether sons or daughters from previous relationships of same-sex or opposite-sex partners or former spouses would be considered an employee's son or daughter. Such sons or daughters would be covered, because paragraph (4) covers any son or daughter of an employee's domestic partner who meets any of the categories described in paragraphs (1)–(3) (*e.g.,* biological, step, adopted, ward or loco parentis status, as well as ward or loco parentis status when the son or daughter was a minor). We believe the proposed rule covers the applicable categories. We note, however, that paragraph (4) does not include a son or daughter of an employee's spouse, so we are revising paragraph (4) to read—"a son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner."

Definition of "In Loco Parentis"

Two agencies requested a plain language explanation or actual definition of the term "*in loco parentis,*" as they were concerned that the term may not be commonly used by the human resources practitioners interpreting the regulations. We decline to further define the term "*in loco parentis,*" as it is subject to interpretation under State law. In the unlikely event that an agency has a question about *in loco parentis* status, the agency should contact its Office of General Counsel for interpretation.

Definitions of Domestic Partner and Committed Relationship

One commenter supported the inclusion of both same-sex and opposite-sex partners in the definition of *domestic partner,* saying that including both "fostered equality." Another commenter mistakenly believed that the regulations discriminate against opposite-sex domestic partners and consequently wanted the changes to apply also to opposite-sex domestic partners or domestic partners of legally recognized civil unions. The definition of *domestic partner* means "an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships." Furthermore, the definition of *committed relationship* explicitly recognizes a civil union as one means of establishing the existence of a committed relationship, regardless of whether the individuals are of the same or opposite sex. Therefore, no change is necessary.

One agency expressed concern that the term *domestic partner* could be construed to apply to someone who does not share any familial or emotional bond with the employee, such as a roommate. To qualify as a domestic partner, the employee must be in a committed relationship as defined in the proposed regulations: "a *committed relationship* means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including but not limited to a civil union)." Therefore, the definition of a *committed relationship* would preclude casual

roommates from qualifying as each other's domestic partner. We note that two friends might qualify as family members under the "blood or affinity" clause if they have a sufficiently close relationship.

One agency expressed confusion because the terms "domestic partner" and "committed relationship" are each referenced in the definition of the other term. One commenter requested "solidifying" the process of confirming an employee's domestic partnership, while another commenter stated that the definitions are sufficiently narrow to be inclusive while preventing fraud and abuse. We do not agree that the terms are confusing and agree with another commenter that they are sufficiently narrow to be inclusive while preventing fraud and abuse. With regard to documentation, agencies continue to have the same authority to request more information in cases of suspected leave abuse that they have always exercised. In general, agencies should apply the same standards of verification for normal requests for leave to care for domestic partners that they apply to requests for leave to care for spouses.

One agency suggested that, rather than create definitions for *domestic partner* and *committed relationship,* OPM simply redefine the "blood or affinity" clause under the *family member* definition to read: "[a]ny individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. *These examples include stepparents and stepchildren, grandparents, grandchildren, common law, civil union, and same-sex and opposite-sex domestic partners.*" (Italics added.) We do not agree that adding these examples to the "blood or affinity" clause is necessary, since as we stated above, we prefer to give agencies the discretion to interpret the phrase "blood or affinity" according to the standard provided. The suggested language implies we are limiting relationships covered under the "blood or affinity" clause to the examples listed, which is not the case.

Documentation for a Committed Relationship

We received several comments regarding what documentation and evidence would be necessary to prove a *committed relationship.* One commenter would like OPM to establish the required documentation since agencies will likely implement their own agency policies if no Governmentwide policy exists. One commenter wanted to know what standard, absent a marriage, civil union, or other form of legal validation, an agency should use to determine whether a relationship fits the definition of "committed." One commenter suggested using a notarized affidavit to establish a same-sex domestic partner relationship. Another commenter agreed that a notarized document would be acceptable and also suggested the employee provide evidence of owning property together or joint bank accounts. Similar to other categories of employee relationships, OPM does not normally require proof of a domestic partnership for the purpose of leave administration. For example, an agency does not typically request specific documentation to prove an employee's relationship with his or her family member (e.g., parent, spouse, sister, brother). We find that agencies are in the best position to administer their own leave programs and should follow the same procedure for all employees. With regard to documentation, agencies continue to have the same authority to request more information in cases of suspected leave abuse.

State Laws and Recognition of Marriages, Civil Unions, and Domestic Partnerships

One professional organization requested confirmation that a domestic partnership would be established conclusively if the relationship has been granted legal recognition by a State or the District of Columbia as a marriage or analogous relationship. An agency asked whether the regulations excluded common-law marriages. With regard to the question about common-law marriages, we note that, in States allowing common-law marriage, establishment of a common-law marriage is the equivalent of establishing a spousal relationship, and spouses are already covered by the definition of *family member.* We confirm that both the proposed and final regulations cover common-law marriage and any relationship that is granted legal recognition by a State or the District of Columbia as a marriage or analogous relationship.

One agency believes that agencies should follow State laws regarding the recognition of marriage when determining whether to approve leave, and suggested limiting this benefit only to relationships granted legal recognition by a State. We disagree and believe the final regulations are more equitable and in line with the President's memorandum, because they apply even in States and other jurisdictions where same-sex marriage or civil unions are not recognized or in States or jurisdictions where domestic partners cannot register. OPM is responsible for establishing Governmentwide policies and procedures for the Federal Government and believes the rules should be applied consistently across the Federal workforce. Therefore, no change is being made.

Potential Discrimination

One commenter was concerned that employees who declare a relationship with a same-sex partner for purposes of these regulations may experience employment discrimination, particularly in Federal agencies located in States where sexual orientation is not a statutorily protected class. The commenter was also concerned that if the same-sex domestic partner discloses his or her sexual orientation to receive these benefits, there is a risk and possibility of becoming a victim of hate crimes. In addition, the commenter states that because domestic partnerships are not recognized in many States, there is a question as to the legal standards a relationship must meet before it is recognized as a domestic partnership for purposes of the regulation.

Although these are very important issues to consider, these concerns are generally beyond the scope of these regulations, because OPM has not been given the authority to interpret and implement the statutes concerned. We note that 5 U.S.C. 2302(b)(10) prohibits discrimination against Federal employees or Federal job applicants based on factors not related to job performance, including sexual orientation. Employees who believe they have suffered such discrimination may thus pursue remedies under the civil service laws.

Impact on Dual Status Military (Reserve) Technicians

One commenter asked how military agencies should deal with the fact that an employee who has asked for leave to care for a domestic partner has just self-identified as being in a same-sex relationship in violation of 10 U.S.C. 654 (commonly referred to as, "Don't Ask, Don't Tell"). The commenter was particularly concerned about the case of National Guard Dual Status Military Technicians and Dual Status Reserve Military Technicians where civilian employment is tied to military membership. The invocation of OPM's leave regulations would not prove conclusively that a domestic partnership involves a relationship of the same sex, since the definition of *domestic partner* includes "both same-sex and opposite-sex relationships." Further, the regulations do not require

identification of the domestic partner or the domestic partner's gender. Nonetheless, we understand there may be consequences for employees who are in a same-sex partnership with a military member, or who have a part-time military status themselves, especially in those agencies with policies requiring documentation to support a request for leave, and where the domestic partner's gender would be clear from the submitted documentation. Employees must therefore evaluate their own situations and consider the possible impact of their request for leave on their partner's or their own military status.

Definition of Spouse

One commenter stated that if the proposed rule becomes final, every Federal law that uses the term *spouse* will need to be changed to recognize a domestic partner. This belief is unfounded. The proposed regulations add same-sex and opposite-sex domestic partners to the regulatory definitions of *family member* and *immediate relative,* and apply only to the sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and the emergency leave transfer programs. Further, changes in regulation do not cause changes in statute. Therefore, the new definition of *domestic partner* does not apply to any Federal laws where benefits are given specifically to spouses. In particular, the new definitions do not apply to the Family and Medical Leave Act (FMLA) at 5 U.S.C. 6381–6387 and its associated regulations at 5 CFR part 630, subpart L. The FMLA statute and regulations do not include a definition of *family member* or *immediate relative;* rather, they specify individuals for whose care an employee may take FMLA leave (*e.g.,* a spouse). The statute does not authorize employees to take FMLA leave to care for domestic partners.

Application to United States Postal Service

We received two comments from employees of the United States Postal Service (USPS) who strongly support the proposed definition of *family member,* so they would be able to provide care for their same-sex domestic partners. OPM does not have jurisdiction over USPS policies or collective bargaining agreements. We regulate for employees covered by the leave provisions in chapter 63 of title 5, United States Code. Employees who work for USPS or other Government organizations not covered by title 5 should consult with their human resources office.

Request for Additional Benefits

Some commenters requested that OPM provide health care and other benefits to same-sex partners. This is outside the scope of these regulations; however, the President has directed OPM to review all benefits and to identify those, such as health care, where benefits cannot be provided to same-sex partners under the governing statute, and those where the benefits may be provided through a change in regulation alone. The resulting report will be provided to the President for his consideration.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is amending 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

■ 2. In § 630.201, paragraph (b) is amended by revising the definition of *family member* and by adding definitions of *committed relationship, domestic partner, parent,* and *son or daughter* in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

Committed relationship means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian;

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis;* or

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

* * * * *

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

* * * * *

■ 3. In § 630.803, revise the definition of *immediate relative* and add definitions of *committed relationship, domestic partner, parent,* and *son or daughter* in alphabetical order to read as follows:

§ 630.803 Definitions.

* * * * *

Committed relationship means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

* * * * *

Immediate relative means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis.*

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

■ 4. In § 630.902, revise the definition of *family member* and add definitions of *committed relationship, domestic partner, parent,* and *son or daughter* in alphabetical order to read as follows:

§ 630.902 Definitions.

* * * * *

Committed relationship means one in which the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a State or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands *in loco parentis* to the employee or stood *in loco parentis* to the employee when the employee was a minor or required someone to stand *in loco parentis.*

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

* * * * *

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis;* or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

■ 5. In § 630.1002, add the definitions of *committed relationship, domestic partner, parent,* and *son or daughter* in alphabetical order to read as follows:

§ 630.1002 Definitions.

* * * * *

Committed relationship has the meaning given that term in subpart I of this part.

Domestic partner has the meaning given that term in subpart I of this part.

* * * * *

Parent has the meaning given that term in subpart I of this part.

* * * * *

Son or daughter has the meaning given that term in subpart I of this part.

■ 6. In § 630.1102, add the definitions of *committed relationship, domestic partner, parent,* and *son or daughter* in alphabetical order to read as follows:

§ 630.1102 Definitions.

* * * * *

Committed relationship has the meaning given that term in subpart I of this part.

* * * * *

Domestic partner has the meaning given that term in subpart I of this part.

* * * * *

Parent has the meaning given that term in subpart I of this part.

Son or daughter has the meaning given that term in subpart I of this part.

* * * * *

[FR Doc. 2010–14252 Filed 6–11–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3430

[0524–AA61]

Competitive and Noncompetitive Nonformula Federal Assistance Programs—Administrative Provisions for Biomass Research and Development Initiative

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: The National Institute of Food and Agriculture (NIFA), formerly the Cooperative State Research, Education, and Extension Service (CSREES), is publishing a set of specific administrative requirements for the Biomass Research and Development Initiative (BRDI) to supplement the Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions for this program. The BRDI is authorized under section 9008 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008(FCEA).

DATES: This interim rule is effective on June 14, 2010. The Agency must receive comments on or before October 12, 2010.

ADDRESSES: You may submit comments, identified by 0524–AA61, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: policy@NIFA.usda.gov. Include Regulatory Information Number (RIN) number 0524–AA61 in the subject line of the message.

Fax: 202–401–7752.

Mail: Paper, disk or CD–ROM submissions should be submitted to National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue, SW., Washington, DC 20250–2299.

Hand Delivery/Courier: National Institute of Food and Agriculture; U.S. Department of Agriculture; Room 2258, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

Instructions: All comments submitted must include the agency name and the RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Carmela Bailey, National Program Leader, Plant and Animal Systems, National Institute of Food and Agriculture, U.S. Department of Agriculture, STOP 3356, 1400 Independence Avenue, SW., Washington, DC 20250–2299; Voice: 202–401–6443; Fax: 202–401–4888; e-mail: *cbailey@NIFA.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

Section 9008 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171 (7 U.S.C. 8108), as amended by section 9001 of the Food, Conservation, and Energy Act of 2008 (FCEA), Public Law 110–246, provides authority to the Secretary of Agriculture and the Secretary of Energy, to establish and carry out a joint Biomass Research and Development Initiative (BRDI) under which competitively awarded grants, contracts, and financial assistance are provided to, or entered into with, eligible entities to carry out research on and development and demonstration of biofuels and biobased products; and the methods, practices, and technologies for the production of biofuels and biobased products. Should the Secretaries of USDA and DOE decide to make competitive Federal assistance awards under this authority, the rules contained within subpart K apply. Activities authorized under BRDI are carried out in consultation with the Biomass Research and Development Board, established in section 9008(c) of FSRIA and the Biomass Research and Development Technical Advisory committee established in section 9008(d) of FSRIA. The USDA authority to carry out this program has been delegated to NIFA through the Under Secretary for Research, Education, and Economics.

Purpose

The objectives of BRDI are to develop (a) technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels; (b) high-value biobased products (1) to enhance the economic viability of biofuels and power, (2) to serve as substitutes for petroleum-based feedstocks and products, and (3) to enhance the value of coproducts produced using the technologies and processes; and (c) a diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

Organization of 7 CFR Part 3430

A primary function of NIFA is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. As noted above, NIFA has been delegated the authority to administer this program and will be issuing Federal assistance awards for funding made available for this program; and thus, awards made under this authority will be subject to the Agency's assistance regulations at 7 CFR part 3430, Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions. The Agency's development and publication of these regulations for its non-formula Federal assistance programs serve to enhance its accountability and to standardize procedures across the Federal assistance programs it administers while providing transparency to the public. NIFA published 7 CFR part 3430 with subparts A through F as an interim rule on August 1, 2008 [73 FR 44897–44909] and as a final rule on [September 4, 2009] [74 FR 45736–45752]. These regulations apply to all Federal assistance programs administered by NIFA except for the formula grant programs identified in 7 CFR 3430.1(f), the Small Business Innovation Research programs, with implementing regulations at 7 CFR part 3403, and the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and

Teaching Policy Act of 1977 (NARETPA).

NIFA organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula Federal assistance awards. Subparts F and thereafter apply to specific NIFA programs.

NIFA is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations, (2) purpose, (3) definitions (those in addition to or different from § 3430.2), (4) eligibility, (5) project types and priorities, (6) funding restrictions (including indirect costs), and (7) matching requirements. Subparts F and thereafter contain the above seven components in this order. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.,* additional reporting requirements). Through this rulemaking, NIFA is adding subpart K for the administrative provisions that are specific to the Federal assistance awards made under the BRDI authority.

Timeline for Implementing Regulations

NIFA is publishing this rule as an interim rule with a 120-day comment period and anticipates publishing a final rule by November 1, 2010. However, in the interim, these regulations apply to the Federal assistance awards made under the BRDI authority.

II. Administrative Requirements for the Proposed Rulemaking

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget. This interim rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of $100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President's priorities or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This interim rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this interim rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA). The Department concludes that this interim rule does not impose any new information requirements; however, the burden estimates will increase for existing approved information collections associated with this rule due to additional applicants. These estimates will be provided to OMB. In addition to the SF–424 form families (*i.e.,* Research and Related and Mandatory), SF–425 Federal Financial Report, Financial Status Reports; NIFA has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, NIFA Current Research Information System (CRIS); No. 0524–0041, NIFA Application Review Process; and No. 0524–0026, Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

Catalog of Federal Domestic Assistance

This interim regulation applies to the Federal assistance program administered by NIFA under the Catalog for Federal Domestic Assistance (CFDA) No.10.312, Biomass Research and Development Initiative.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this interim rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this interim rule in accordance with Executive Order 13175, and has determined that it does not have "tribal implications." The interim rule does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this interim rule easier to understand.

List of Subjects in 7 CFR Part 3430

Administrative practice and procedure, Agricultural Research, Education, Extension, Federal assistance.

■ Accordingly, title 7 part 3430 of the Code of Federal Regulations is amended as set forth below:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON-FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVSIONS

■ 1. The authority for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

■ 2. Add a new subpart K, to read as follows:

Subpart K—Biomass Research and Development Initiative

Sec.

Subpart K—Biomass Research and Development Initiative

§ 3430.700 Applicability of regulations.

The regulations in this subpart apply to the Federal assistance awards made

under the program authorized under section 9008 of the Farm Security and Rural Investment Act of 2002, as amended by section 9001 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

§ 3430.701 Purpose.

In carrying out the program, NIFA, in cooperation with the Department of Energy, is authorized to make competitive awards under section 9008(e) of FSRIA to develop:

(a) Technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels;

(b) High-value biobased products—

(1) To enhance the economic viability of biofuels and power,

(2) To serve as substitutes for petroleum-based feedstocks and products, and

(3) To enhance the value of coproducts produced using the technologies and processes; and

(c) A diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

§ 3430.702 Definitions.

The definitions specific to BRDI are from the authorizing legislation, the National Program Leadership of NIFA, and the Department of Energy. The definitions applicable to the program under this subpart include:

Advanced Biofuel means fuel derived from renewable biomass other than corn kernel starch, including:

(1) Biofuel derived from cellulose, hemicellulose, or lignin;

(2) Biofuel derived from sugar and starch (other than ethanol derived from corn kernel starch);

(3) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(4) Diesel-equivalent fuel derived from renewable biomass, including algael oils, oil seed crops, re-claimed vegetable oils and animal fat;

(5) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass;

(6) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and

(7) Other fuel derived from cellulosic biomass.

Advisory Committee means the Biomass Research and Development Technical Advisory Committee established by section 9008(d)(1) of FSRIA.

Biobased Product means:

(1) An industrial product (including chemicals, materials, and polymers) produced from biomass; or

(2) A commercial or industrial product (including animal feed and electric power) derived in connection with the conversion of biomass to fuel.

Bioenergy means power generated in the form of electricity or heat using biomass as a feedstock.

Biofuel means a fuel derived from renewable biomass.

Biomass Conversion Facility means a facility that converts or proposes to convert renewable biomass into:

(1) Heat;

(2) Power;

(3) Biobased products; or

(4) Advanced biofuels.

Biorefinery means a facility (including equipment and processes) that—

(1) Converts renewable biomass into biofuels and biobased products; and

(2) May produce electricity.

Board means the Biomass Research and Development Board established by section 9008(c) of the FSRIA of 2002 (7 U.S.C. 8108(c)).

BRDI means the Biomass Research and Development Initiative.

Cellulosic Biofuel means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator of the Environmental Protection Agency, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

Demonstration means demonstration of technology in a pilot plant or semi-works scale facility, including a plant or facility located on a farm. A biorefinery demonstration is a system capable of processing a minimum of 50 tons/day of biomass feedstock.

DOE means the Department of Energy.

Institutions of higher education has the meaning given the term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

Intermediate Ingredient or Feedstock means a material or compound made in whole or in significant part from biological products, including renewable agricultural materials (including plant, animal, and marine materials) or forestry materials, that are subsequently used to make a more complex compound or product.

Life cycle assessment means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

Life cycle cost means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

Pilot Plant is an integrated chemical processing system that includes the processing units necessary to convert biomass feedstock into biofuels/bioenergy/biobased products at a minimum feed rate of 1 ton/day of biomass feedstock.

Private sector entities include companies, corporations, farms, ranches, cooperatives, and others that compete in the marketplace.

Recovered materials means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Recycling means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Renewable Biomass means:

(1) Materials, pre-commercial thinnings, or invasive species from National Forest System land (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)) and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that—

(i) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans; and the requirements for—

(A) Old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); and

(B) Large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe

that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including—

(i) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(ii) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Research and development (R&D) projects means a research project only, a development project only, or a combination of research and development project; however, an R&D project may not be submitted including a demonstration project or vice versa.

Semi-works is a combination of chemical processing units that constitute a subset of the fully integrated system and are used to develop process flow diagrams and mass and energy balances for the purposes of scaling up to a demonstration scale facility.

Transportation fuel means fuel for use in motor vehicles, motor vehicle engines, non-road vehicles, or non-road engines (except for ocean-going vessels).

§ 3430.703 Eligibility.

To be eligible to receive an award under this subpart, the recipient shall be—

(a) An institution of higher education (as defined in § 3430.702);

(b) A National Laboratory;

(c) A Federal research agency;

(d) A State research agency;

(e) A private sector entity (as defined in § 3430.702 of this part);

(f) A nonprofit organization; or

(g) A consortium of two or more entities listed in paragraphs (a) through (f) of this section.

§ 3430.704 Project types and priorities.

(a) *Technical Topic Areas.* Biomass Research and Development Initiative (BRDI) awards shall be directed (in consultation with the Biomass Research and Development Board, the Administrator of the Environmental Protection Agency and heads of other appropriate departments and agencies) in the following three primary technical topic areas:

(1) *Feedstocks Development.* Research, development, and demonstration activities regarding feedstocks and feedstock logistics (including the harvest, handling, transport, preprocessing, and storage) relevant to production of raw materials for conversion to biofuels and biobased products.

(2) *Biofuels and Biobased Products Development.* Research, development, and demonstration activities to support—

(i) The development of diverse cost-effective technologies for the use of cellulosic biomass in the production of biofuels and biobased products; and

(ii) Product diversification through technologies relevant to production of a range of biobased products (including chemicals, animal feeds, and cogenerated power) that potentially can increase the feasibility of fuel production in a biorefinery.

(3) *Biofuels Development Analysis*—(i) *Strategic Guidance.* The development of analysis that provides strategic guidance for the application of renewable biomass technologies to improve sustainability and environmental quality, cost effectiveness, security, and rural economic development.

(ii) *Energy and Environmental Impact.* Development of systematic evaluations of the impact of expanded biofuel production on the environment (including forest land) and on the food supply for humans and animals, including the improvement and development of tools for life cycle analysis of current and potential biofuels.

(iii) *Assessment of Federal Land.* Assessments of the potential of Federal land resources to increase the production of feedstocks for biofuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations.

(b) *Additional Considerations.* Within the technical topic areas described in § 3430.704(a)(3), NIFA, in cooperation with DOE, shall support research and development to—

(1) Create continuously expanding opportunities for participants in existing biofuels production by seeking synergies and continuity with current technologies and practices;

(2) Maximize the environmental, economic, and social benefits of production of biofuels and derived biobased products on a large scale; and

(3) Facilitate small-scale production and local and on-farm use of biofuels, including the development of smallscale gasification technologies for production of biofuel from cellulosic feedstocks.

§ 3430.705 Funding restrictions.

(a) *Facility costs.* Funds made available under this subpart shall not be used for the planning, repair, rehabilitation, acquisition, or construction of a building or facility.

(b) *Indirect costs.* Subject to § 3430.52 of this part, indirect costs are allowable for Federal assistance awards made by NIFA.

(c) *Minimum allocations.* After consultation with the Board, NIFA in cooperation with DOE, shall require that each of the three technical topic areas described in § 3430.704 of this part receive not less than 15 percent of funds made available to carry out BRDI.

§ 3430.706 Matching requirements.

(a) *Requirement for Research and/or Development Projects.* The non-Federal share of the cost of a research or development project under BRDI shall be not less than 20 percent of the total Federal funds awarded. NIFA may reduce the non-Federal share of a research or development project if the reduction is determined to be necessary and appropriate.

(b) *Requirement for Demonstration and Commercial Projects.* The non-Federal share of the cost of a demonstration or commercial project under BRDI shall be not less than 50 percent of the total Federal funds awarded.

(c) *Indirect costs.* Use of indirect costs as in-kind matching contributions is subject to § 3430.52 of this part.

§ 3430.707 Administrative duties.

(a) After consultation with the Board, NIFA, in cooperation with DOE, shall:

(1) Publish annually one or more joint requests for proposals for Federal assistance under BRDI; and

(2) Require that Federal assistance under BRDI be awarded based on a scientific peer review by an independent panel of scientific and technical peers.

(b) NIFA, in cooperation with DOE, shall ensure that applicable research results and technologies from the BRDI are:

(1) Adapted, made available, and disseminated, as appropriate; and

(2) Included in the best practices database established under section 1672C(e) of the Food, Agriculture, Conservation, and Trade Act of 1990.

§ 3430.708 Review criteria.

(a) *General.* BRDI peer reviews of applications are conducted in accordance with requirements found in section 9008 of the Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171 (7 U.S.C. 8101 *et seq.*); section 103 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613); and regulations found in title 7 of the Code

of Federal Regulations, sections 3430.31 through 3430.37.

(b) *Additional Considerations.* Special consideration will be given to applications that—

(1) Involve a consortium of experts from multiple institutions;

(2) Encourage the integration of disciplines and application of the best technical resources; and

(3) Increase the geographic diversity of demonstration projects.

§ 3430.709 Duration of awards.

The term of a Federal assistance award made for a BRDI project shall not exceed 5 years. No-cost extensions of time beyond the maximum award terms will not be considered or granted.

Signed at Washington, DC, on June 4, 2010.

Roger Beachy,

Director, National Institute of Food and Agriculture.

[FR Doc. 2010–14159 Filed 6–11–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

Rural Microentrepreneur Assistance Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Interim rule; correction.

SUMMARY: The Agency published a document in the **Federal Register** of May 28, 2010, establishing a technical and financial assistance program for qualified microenterprise development organizations to support microentrepreneurs in the development and ongoing success of rural microenterprises. This document corrects the Office of Management and Budget (OMB) control number assigned to the collection of information approved by OMB for the interim rule.

DATES: Effective on June 28, 2010.

FOR FURTHER INFORMATION CONTACT: Lori Washington, (202) 720–9815.

SUPPLEMENTARY INFORMATION: As published, the interim rule references the OMB control number assigned for the collection of information as 0570–XXXX under the Paperwork Reduction Act section and in § 4280.400. The correct reference should read: 0570–0062.

In the **Federal Register** of May 28, 2010 (75 FR 30114), in FR Doc. 2010–11931, make the correction in the following places:

1. On page 30115, column 1, under the heading "Paperwork Reduction Act," lines 8 and 21, revise the reference "0570–XXXX" to read "0570–0062"; and

2. On page 30158, column 3, line 6, under "§ 4280.400," revise the reference "0570–XXXX" to read "0570–0062".

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–14160 Filed 6–11–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 561

[Docket ID OTS–2010–0011]

RIN 1550–AC40

Definitions for Regulations Affecting All Savings Associations; Money Market Deposit Accounts

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision is amending its regulations to eliminate restrictions on certain kinds of transfers from money market deposit accounts for savings associations. The Board of Governors of the Federal Reserve System (the FRB) has already amended its regulations ("Regulation D") to eliminate these restrictions for member banks. Because this change is ministerial, the OTS has determined for good cause that public notice and comment is unnecessary under the Administrative Procedure Act (APA) and is implementing this change by means of a final rule without notice and comment.

DATES: *Effective Date:* The rule is effective June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Suzanne McQueen, Consumer Regulation Analyst, Compliance and Consumer Protection (202) 906–6451, Marvin L. Shaw, Senior Attorney, Regulations and Legislation Division, Office of the Chief Counsel, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION

I. Background

A. Federal Reserve Board Amendments to Regulation D

On May 29, 2009, the Board of Governors of the Federal Reserve System (FRB) issued final amendments to 12 CFR part 204, "Reserve Requirements of Depository Institutions (Regulation D)."[1] Among other changes, the amendments eliminate restrictions on certain types of transfers that consumers can make from savings deposits. The changes became effective on July 2, 2009. In the definition for savings deposit, Regulation D lists several types of savings deposit accounts, including Money Market Deposit Accounts.

Prior to the FRB amendments, Regulation D limited the number of "convenient" transfers and withdrawals from savings deposits to not more than six per month. Within this overall limit of six, not more than three transfers or withdrawals could be made by check, debit card, or similar order by the depositor and payable to third parties (the three transfer sublimit). Under the FRB final amendments to Regulation D, the permissible monthly number of transfers or withdrawals from savings deposits by check, debit card, or similar order payable to third parties has been increased from three to six. In other words, while the FRB has decided to retain the overall six-transfer limit for savings deposits, it has eliminated the three transfer sublimit within the overall limit that applied to transfers or withdrawals from savings deposits by check, debit card, or similar order payable to third parties. The FRB decided to eliminate the three transfer sublimit because distinctions between such transfers and other types of pre-authorized or automatic transfers subject to the six-per-month limit were no longer logical in light of technological advances.

B. OTS Regulations Addressing Savings Accounts

Pursuant to its authority under the Home Owners' Loan Act (HOLA),[2] OTS issued regulations addressing limits on certain types of savings accounts known as Money Market Deposit Accounts (MMDAs) at 12 CFR 561.28. A second provision—12 CFR 557.10—which addresses OTS's authority under HOLA to raise funds through accounts, further specifies that "12 CFR parts 204 [Regulation D] and 230 apply to your deposit accounts."

OTS has received inquiries from savings associations about whether the agency is planning to amend its definition of MMDA to make it consistent with the FRB and FDIC[3] regulations. The savings associations stated that without such an amendment

[1] 74 FR 25629.

[2] 12 U.S.C. 1462, 1463, 1464.

[3] 74 FR 47050 (September 15, 2009).

they would be at a competitive disadvantage.

C. Amendment to Definition of Money Market Deposit Accounts

In accord with the FRB amendment to Regulation D and the FDIC's amendment to its definition of "demand deposit," OTS is amending its definition of Money Market Deposit Accounts in section 561.28 to eliminate the three transfer sublimit. This will be done by eliminating the proviso in subsection 561.28(a)(2)(i), which currently reads as follows: "Provided, that no more than three of the six transfers provided for in this paragraph (a)(2)(i) may be by check, draft, debit card, or similar order made by the depositor and payable to a third parties."

II. Exemption From Public Notice and Comment

To issue a final rule without public notice and comment, an agency must find good cause that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b) Similarly, to issue a rule that is immediately effective, the agency must find good cause for dispensing with the 30-day delay required by the Administrative Procedure Act (APA).

OTS regulations require that the FRB's Regulation D apply to OTS's definition of various savings accounts. To achieve consistency among the agencies and to further the intent of OTS's regulation at 12 CFR 557.10, OTS has decided to eliminate the three transfer sublimit for savings associations in the same way that the FRB has done for member banks and that the FDIC has done for banks under its jurisdiction. For this reason, OTS has determined for good cause that public notice and comment is unnecessary under the APA, and that the rule should be published in the **Federal Register** as a final rule.

III. Effective Date

For the same reasons OTS has determined that public notice and comment is unnecessary for good cause, OTS also finds good cause to adopt an effective date that would be less than 30 days after the publication in the **Federal Register** pursuant to the APA. 5 U.S.C. 553(d) Accordingly, the amendment to section 561.28 will be effective as of the date of publication in the **Federal Register**.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a general notice of proposed rulemaking. 5 U.S.C. 603. As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

V. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

VI. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

VII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is contained in this final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 561

Administrative practice and procedure, Savings associations.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

PART 561—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

■ 1. The authority citation for part 509 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

2. Section 561.28 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 561.28 Money Market Deposit Accounts.

(a) * * *

■ (2)(i) The depositor is authorized by the savings association to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same savings association to the savings association itself, or to a third party.

* * * * *

Dated: June 3, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–14243 Filed 6–11–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0180]

RIN 1625–AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard temporarily changes the enforcement period of special local regulations for a recurring marine event in the Fifth Coast Guard District. These regulations apply to only one recurring marine event that establishes two spectator vessel anchorage areas and restricts vessel traffic. Special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Hampton River, Hampton, VA, and Sunset Creek, Hampton, VA during the event.

DATES: This rule is effective from 11:30 a.m. on July 10, 2010, to 1:30 p.m. on July 11, 2010. This rule will be enforced from 11:30 a.m. to 2:30 p.m. and 9 p.m. to 10 p.m. on July 10, 2010, and from 12:30 p.m. to 1:30 p.m. on July 11, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0180 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0180 in the "Keyword" box, and then clicking on "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Tiffany Duffy, Project Manager, Sector Hampton Roads, Waterways Management Division, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 5, 2010, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation for Marine Event; Temporary Change of Dates for Recurring Marine Event in the Fifth Coast Guard District in the **Federal Register** (75 FR 17099). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. The on water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation temporarily changes the enforcement period of special local regulations for a recurring marine event within the Fifth Coast Guard District. This regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

On July 9, 10, and 11, 2010, the City of Hampton and The Virginia Air and Space Museum will sponsor the "11th Hampton Blackbeard Festival," a historic festival on the waters of the Hampton River near Hampton, Virginia. The regulation at 33 CFR 100.501 is effective annually for this marine event. The event will consist of three replica pirate ships conducting a simulated wartime demonstration on July 10, 2010 from 11:30 a.m. to 2:30 p.m. and July 11, 2010 from 12:30 p.m. to 1:30 p.m. on the Hampton River in the vicinity of Mill Point Park, Hampton, Virginia. The event will also consist of a fireworks display on July 10, 2010 from 9 p.m. to 10 p.m. over the Hampton River in the vicinity of Mill Point Park, Hampton, Virginia. A fleet of spectator vessels is expected to gather near the event site to view the simulated wartime demonstration and fireworks display. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard temporarily restricts vessel traffic in the event area during the demonstration and fireworks display. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under provisions of 33 CFR 100.501, from 11:30 a.m. to 2:30 p.m. and 9 p.m. to 10 p.m. on July 10, 2010, and from 12:30 p.m. to 1:30 p.m. on July 11, 2010, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Hampton River, near Hampton, Virginia.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule prevents traffic from transiting a portion of the Hampton River during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the Hampton River where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, from 11:30 a.m. on July 10, 2010, to 1:30 p.m. on July 11, 2010, suspend line No. 36 in the Table to § 100.501.

■ 3. In § 100.501, from 11:30 a.m. on July 10, 2010, to 1:30 p.m. on July 11, 2010, add line No. 61 in Table to § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

* * * * *

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

No.	Date	Event	Sponsor	Location
*	*	*	*	* * *
61	July 9—July 11, 2010.	Blackbeard Festival.	City of Hampton and The Virginia Air and Space Center.	The waters of Sunset Creek and Hampton River shore to shore bounded to the north by the C & O Railroad Bridge and to the south by a line drawn from Hampton River Channel Light 16 (LL 5715), located at latitude 37°01′03.0″ N, longitude 76°20′26.0″ W, to the finger pier across the river at Fisherman's Wharf, located at latitude 37°01′01.5″ N, longitude 76°20′32.0″ W. Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shore at latitude 37°01′48.0″ N, longitude 76°20′22.0″ W, across the river to the eastern shore at latitude 37°01′44.0″ N, longitude 76°20′13.0″ W, and to the north by the C & O Railroad Bridge. The anchorage area will be marked by orange buoys. Area B: Located on the eastern side of the channel, in the Hampton River, south of the Queen Street Bridge, near the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′26.0″ N, longitude 76°20′24.0″ W, latitude 37°01′22.0″ N, longitude 76°20′26.0″ W, and latitude 37°01′22.0″ N, longitude 76°20′23.0″ W. The anchorage area will be marked by orange buoys.

Dated: May 24, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard Captain of the Port, Hampton Roads.

[FR Doc. 2010–13811 Filed 6–9–10; 4:15 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0447]

Drawbridge Operation Regulation; Teche Bayou, Morbihan, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the LA 44 swing span bridge across Teche Bayou, mile 56.7, at Morbihan, Iberia Parish, Louisiana. The deviation is necessary to jack and shim the bridge and to install a new roller wedge system. This deviation allows the bridge to remain closed to navigation for three consecutive weeks.

DATES: This deviation is effective from 6:30 a.m. on Monday, June 21 through 6:30 a.m. on Tuesday, August 3, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0447 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0447 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the swing span bridge across Teche Bayou at mile 56.7 in Morbihan, Iberia Parish, Louisiana. The closure is necessary in order to rehabilitate machinery parts on the bridge. The work will require the bridge to be jacked up and taken out of service. This maintenance is essential for the continued operation of the bridge.

In accordance with 33 CFR 117.501(a)(18), the swing span of the bridge shall open on signal if at least 4 hours notice is given. This deviation allows the swing span of the bridge to remain closed to navigation for three consecutive weeks between 6:30 a.m. Monday, June 21 and 6:30 a.m. Tuesday, August 3, 2010. Uncontrollable variables such as material supply delays and inclement weather make it difficult to predict the exact dates that work can be conducted. Thus, the exact dates for the closure cannot be firmly scheduled. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System as soon as information pertaining to the exact closure dates becomes available. The Coast Guard will coordinate the closure with the commercial users of the waterway as exact closure dates are known.

The vertical clearance of the swing span bridge in the closed-to-navigation position is 6.12 feet above Mean high Water Elevation 5.7 feet Mean Sea Level. Navigation on the waterway consists of tugs with tows, ship fabricator's commissioned vessels, crew boats and oil field support/service vessels. The bridge opens for the passage of navigation an average of 26 times per month. There are no alternate waterway routes available. Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 2, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–14145 Filed 6–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1096]

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce several safety zones for fireworks displays being held in the Captain of the Port Portland Zone this summer. The dates and times that the zones will be enforced are listed below. This action is necessary to help ensure the safety of the maritime public during the fireworks displays. During the enforcement period for each respective safety zone, no persons or vessels will be allowed to enter or remain in the zone unless authorized by the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR Section 165.1315 will be enforced from May 1, 2010 through September 30, 2010 as specifically noted in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following safety zones codified in 33 CFR 165.1315 during the following dates and times:

(1) Portland Rose Festival Fireworks Display, Portland OR: May 28, 2010 from 8:30 p.m. until 10:30 p.m.

(2) Cedco Inc. Fireworks Display, North Bend, OR: July 3, 2010 from 9:45 p.m. through 10:50 p.m. If the event is delayed by inclement weather, the safety zone will also be enforced on July 4, 2010 from 9:45 p.m. through 10:50 p.m.

(3) Astoria 4th of July Fireworks, Astoria, OR: July 4, 2010 from 8:30 p.m. through 11:30 p.m.

(4) Oregon Food Bank Blues Festival Fireworks, Portland, OR: July 4, 2010 from 8:30 p.m. through 11:30 p.m.

(5) Florence Chamber 4th of July Fireworks Display, Florence, OR: July 4, 2010 from 9 p.m. through 11 p.m.

(6) Oaks Park July 4th Celebration, Portland, OR: July 4, 2010 from 9 p.m. 11 p.m.

(7) Rainier Days Fireworks Celebration, Rainier, OR: July 10, 2010 from 9 p.m. through 11 p.m.

(8) Milwaukie Centennial Fireworks Display, Milwaukie, OR: July 24, 2010 from 9 p.m. through 11 p.m.

(9) Splash Aberdeen Waterfront Festival, Aberdeen, WA: July 4, 2010 from 9 p.m. through 11 p.m.

(10) Arlington Chamber of Commerce Fireworks Display, Arlington, OR: July 4, 2010 from approximately 8:30 p.m. to approximately 11:30 p.m.

(11) East County 4th of July Fireworks, Gresham, OR: July 4, 2010 from approximately 8:30 p.m. to approximately 11:30 p.m.

(12) Port of Cascade Locks July 5th Fireworks Display, Cascade Locks, OR: July 4, 2010 from approximately 8:30 p.m. to approximately 11:30 p.m.

(13) Astoria Regatta Association Fireworks Display, Astoria, OR: August 14, 2010 9:30 p.m. through 11:30 p.m.

(14) City of Washougal July 4th Fireworks Display, Washougal, WA: July 4, 2010 at approximately 8:30 p.m. to approximately 11:30 p.m.

(15) Waverly Country Club 4th of July Fireworks Display, Milwaukie, OR: July 4, 2010 at approximately 8:30 p.m. to 11:30 p.m.

Under the provisions of 33 CFR 165.23, no person may enter or remain in these safety zones unless authorized by the Captain of the Port or his designated representative. Also in accordance with 33 CFR Section 165.23, no person may bring into, cause to be brought into, or allow to remain in these safety zones any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative.

This notice is issued under authority of 33 CFR 165.1315 and 5 U.S.C. 552(a).

Dated: May 5, 2010.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 2010–14149 Filed 6–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0073]

RIN 1625–AA87

Safety and Security Zones; Tall Ships Challenge 2010, Great Lakes, Cleveland, OH, Bay City, MI, Duluth, MN, Green Bay, WI, Sturgeon Bay, WI, Chicago, IL, Erie, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety and security zones around each tall ship visiting the Great Lakes during the Tall Ships Challenge 2010 race series. These safety and security zones will restrict vessel traffic in the vicinity of each tall ship in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the hazards associated with the limited maneuverability of these tall ships and to ensure public safety during tall ships events.

DATES: This rule is effective from 12:01 a.m. on June 23, 2010 until 12:01 a.m. on September 13, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0073 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0073 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Yamaris Barril, Inspections, Prevention Department, Ninth Coast Guard District, Cleveland, OH, telephone (216) 902–6343, e-mail *Yamaris.D.Barril@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 12, 2010, the Coast Guard published a notice of proposed rule making (NPRM) entitled Safety and Security Zones; Tall Ships Challenge

2010, Great Lakes, Cleveland, OH, Bay City, MI, Duluth, MN, Green Bay, WI, Sturgeon Bay, WI, Chicago, IL, Erie, PA in the **Federal Register** (75 FR 18451). The Coast Guard received 0 public submissions commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this operation and immediate action is necessary to prevent possible loss of life or property from the dangers that are associated with Tall Ship operations.

Basis and Purpose

During the Tall Ships Challenge 2010, tall ships will be participating in parades and then mooring in the harbors of Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; Sturgeon Bay, WI; Chicago, IL; and Erie, PA. At 12:01 a.m. on June 23, 2010, a safety and security zone will be established around each tall ship participating in these events. These safety and security zones will move with the tall ships as they travel throughout the Great Lakes. The safety and security zones will terminate at 12:01 a.m. on September 13, 2010.

These temporary safety and security zones are necessary to protect the tall ships from potential harm and to protect the public from the hazards associated with the limited maneuverability of these sailing ships. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to and on Lake Erie, Saginaw Bay, Lake Huron, Duluth Harbor, Lake Superior, Green Bay, Sturgeon Bay, and Lake Michigan. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways and limited maneuverability of the tall ships could easily result in serious injuries or fatalities. Therefore, the Coast Guard will enforce a safety and security zone around each ship to ensure the safety of both participants and spectators in these areas.

Discussion of Comments and Changes

The Coast Guard received 0 public submissions commenting on this rule.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. This determination is based on the following: The safety and security zone around each tall ship will be relatively small. Because the safety and security zones will move with the tall ships course through the Great Lakes, the zones will exist for only a minimal time in any one particular geographical area. Thus, the restrictions on vessel movement within any particular geographical area of the Great Lakes is expected to be minimal. Under certain conditions, moreover, vessels may still transit through a safety and security zone when permitted by the Captain of the Port.

The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in an area of water in which a participating tall ship is transiting, anchored, or moored between 12:01 a.m. on June 23, 2010 and 12:01 a.m. on September 13, 2010. Each zone will be relatively small, and vessels may still transit through a zone with permission from the official on-scene patrol.

The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. The Coast Guard received 0 public submissions commenting on the proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 023–01, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0073 to read as follows:

§ 165.T09–0073 Safety and Security Zones; Tall Ships Challenge 2010; Great Lakes; Cleveland, OH; Bay City, MI; Duluth, MN; Green Bay, WI; Sturgeon Bay, WI; Chicago, IL; Erie, PA.

(a) *Definitions.* The following definitions apply to this section: *Navigation Rules* means the Navigation Rules, International and Inland (*See,* 1972 COLREGS and 33 U.S.C. 2001 *et seq.*).

Official Patrol means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie, Duluth and Lake Michigan to monitor a Tall Ship safety and security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the cognizant Captain of the Port.

Public Vessel means vessels owned, chartered, or operated by the United States or by a State or political subdivision thereof.

Tall Ship means any sailing vessel participating in the Tall Ships Challenge 2010 in the Great Lakes. This includes, but is not limited to, the following: Sailing Vessel (S/V) AMISTAD, S/V APPLEDORE IV, S/V APPLEDORE V, HMS BOUNTY, S/V DENIS SULLIVAN, S/V EUROPA, S/V FAZISI, S/V FRIENDS OF GOOD WILL, S/V INLAND SEAS, S/V LAREVENANTE, S/V LYNX, S/V MADELINE, S/V FLAGSHIP NIAGARA, S/V PATHFINDER, S/V PLAYFAIR, S/V PRIDE OF BALTIMORE II, S/V ROALD AMUNDSEN, S/V RED WITCH, S/V ROTALISTE, S/V ROSEWAY, S/V UNICORN, S/V WELCOME, and S/V WINDY.

(b) *Location.* The following area is a safety and security zone: all navigable waters of the United States located in the Ninth Coast Guard District within a 100 yard radius of any Tall Ship.

(c) *Regulations.* (1) Entry into a safety and security zone described in paragraph (b) of this section is prohibited unless authorized by the cognizant Coast Guard Captain of the Port or the Official Patrol.

(2) Vessels may request permission to enter into a safety and security zone described in paragraph (b) of this section by contacting the Official Patrol on VHF channel 16.

(3) Any vessel operating within a safety and security zone established by this section must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or the on-scene Official Patrol. Any vessel or person allowed to enter a safety and security zone established by this section must still remain at least 25 yards from any Tall Ship, unless authorized to

come within such a distance pursuant to paragraph (c)(4) of this section or permitted to come within such a distance by the cognizant Captain of the Port, his or her designated representative, or the on-scene Official Patrol.

(4) Vessels are permitted to transit through the safety and security zone in waterways that do not provide adequate navigable waters greater than 100 yards from the Tall Ships. Vessels transiting such areas must operate at the minimum speed necessary to maintain a safe course while also maintaining the greatest possible distance away from the Tall Ships.

(d) *Effective period.* This rule is effective from 12:01 a.m. on Wednesday, June 23, 2010 through 12:01 a.m. on Monday September 13, 2010.

(e) *Navigation Rules.* The Navigation Rules must apply at all times within a Tall Ships safety and security zone.

(f) When a Tall Ship approaches within 25 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the tall ship's safety and security zone unless ordered by or given permission from the cognizant Captain of the Port, his or her designated representative, or the on-scene official patrol to do otherwise.

Dated: May 21, 2010.

M.N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2010–14146 Filed 6–11–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 5

RIN 1880–AA84

[Docket ID ED–2008–OM–0011]

Availability of Information to the Public

AGENCY: Office of Management, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Department's compliance with the Freedom of Information Act, as amended (FOIA or the Act) to reflect the changes in the FOIA over recent years.

DATES: These regulations are effective July 14, 2010.

FOR FURTHER INFORMATION CONTACT: Angela Arrington, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5920. Telephone: (202) 401–8365.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: On November 26, 2008, the Secretary published a notice of proposed rulemaking (NPRM) to amend the Department's FOIA regulations in 34 CFR part 5 in the **Federal Register** (73 FR 71986). In the summary to the NPRM, on pages 71987 through 71993, the Secretary discussed how the proposed regulations would amend and update the Department's FOIA regulations to implement changes made to the FOIA (5 U.S.C. 552) in recent years and articulate more clearly, to the public, how the Department processes FOIA requests for publicly available records.

After the public comment period ended, there was further public guidance regarding FOIA issued by the White House and the Department of Justice [1] that we took into account in preparing these final regulations. Thus, there is one substantive difference between the regulations proposed in the NPRM and these final regulations. Specifically, proposed § 5.2 (General policy), which stated the Department's general policy regarding the availability of information under FOIA, has been removed and proposed § 5.3 (Definitions) has been redesignated as § 5.2 (Definitions). Upon further internal review after the publication of the NPRM, and light of the public guidance regarding FOIA, we determined that proposed § 5.2 was unnecessary and potentially confusing. Proposed § 5.2 did not add any requirements or clarification to the Department's FOIA process. Rather, the remaining proposed regulations, adopted as final through these regulations, comprehensively describe how the Department processes FOIA requests.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, the Department received no comments on the proposed regulations.

[1] The President's January 21, 2009 memorandum on FOIA may be found at *http://www.whitehouse.gov/the_press_office/Freedom_of_Information_Act/.* FOIA guidance issued by the Department of Justice may be found at *http://www.justice.gov/oip/foiapost/mainpage.htm.*

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. Pursuant to the terms of the Executive order, it has been determined that this regulatory action is not a significant regulatory action subject to OMB review under section 3(f) of Executive Order 12866.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the NPRM at 73 FR 71993.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 7, 2010.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary revises part 5 of title 34 of the Code of Federal Regulations as follows:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC

Subpart A—General Provisions

Sec.

Subpart B—Records Available to the Public

Subpart C—Procedures for Requesting Access to Records and Disclosure of Records

Subpart D—Fees

Subpart E—Administrative Review

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 5.1 Purpose.

This part contains the regulations that the United States Department of Education follows in processing requests for records under the Freedom of Information Act, as amended, 5 U.S.C. 552. These regulations must be read in conjunction with the FOIA, including its exemptions to disclosure, and, when appropriate, in conjunction with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and its implementing regulations in 34 CFR part 5b.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

§ 5.2 Definitions.

As used in this part:

(a) *Act* or *FOIA* means the Freedom of Information Act, as amended, 5 U.S.C. 552.

(b) *Department* means the United States Department of Education.

(c) *Component* means each separate bureau, office, board, division, commission, service, administration, or other organizational entity of the Department.

(d) *FOIA request* means a written request for agency records that reasonably describes the agency records sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), partnership, corporation, association, and foreign or domestic governments (excluding Federal agencies).

(e)(1) *Agency records* are documentary materials regardless of physical form or characteristics that—

(i) Are either created or obtained by the Department; and

(ii) Are under the Department's control at the time it receives a FOIA request.

(2) *Agency records* include—

(i) Records created, stored, and retrievable in electronic format;

(ii) Records maintained for the Department by a private entity under a records management contract with the Federal Government; and

(iii) Documentary materials preserved by the Department as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Department or because of the informational value of data contained therein.

(3) *Agency records* do not include tangible, evidentiary objects or equipment; library or museum materials made or acquired and preserved solely for reference or exhibition purposes; extra copies of documents preserved only for convenience of reference; stocks of publications; and personal records created for the convenience of an individual and not used to conduct Department business or incorporated into the Department's record keeping system or files.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

Subpart B—Agency Records Available to the Public

§ 5.10 Public reading room.

(a) *General.* Pursuant to 5 U.S.C. 552(a)(2), the Department maintains a public reading room containing agency records that the FOIA requires to be made regularly available for public inspection and copying. Published records of the Department, whether or not available for purchase, are made available for examination. The Department's public reading room is located at the National Library of Education, 400 Maryland Avenue, SW., Plaza Level (Level B), Washington, DC 20202–0008. The hours of operation are 9:00 a.m. to 5:00 p.m., Monday through Friday (except Federal holidays).

(b) *Reading room records.* Agency records maintained in the public reading room include final opinions and orders in adjudications, statements of policy and interpretations adopted by the Department and not published in the **Federal Register**, administrative staff manuals and instructions affecting the public, and copies of all agency records regardless of form or format released to the public pursuant to a FOIA request that the Department determines are likely to be the subject of future FOIA requests.

(c) *Electronic access.* The Department makes reading room records created on or after November 1, 1996, available through its electronic reading room, located on the Department's FOIA Web site at *http://www2.ed.gov/policy/gen/leg/foia/readingroom.html.*

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(2), 20 U.S.C. 3474)

§ 5.11 Business information.

(a) *General.* The Department discloses business information it obtains from a submitter under the Act in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the Department from a submitter that may be protected from disclosure under 5 U.S.C. 552(b)(4) (Exemption 4 of the Act).

(2) *Submitter* means any person or entity (including corporations; State, local, and tribal governments; and foreign governments) from whom the Department obtains business information.

(c) *Designation of business information.*

(1) A submitter must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of its submission that it considers to be business information protected from disclosure under Exemption 4 of the Act.

(2) A submitter's designations are not binding on the Department and will expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(3) A blanket designation on each page of a submission that all information contained on the page is protected from disclosure under Exemption 4 presumptively will not be considered a good faith effort.

(d) *Notice to submitters.* Except as provided in paragraph (g) of this section, the Department promptly notifies a submitter whenever a FOIA request or administrative appeal is made under the Act seeking disclosure of the information the submitter has

designated in good faith as business information protected from disclosure under paragraph (c) of this section, or the Department otherwise has reason to believe that it may be required to disclose information sought to be designated by the submitter as business information protected from disclosure under Exemption 4 of the Act. This notice includes either a description of the business information requested or copies of the requested agency records or portions of agency records containing the requested business information as well as a time period, consistent with § 5.21(c), within which the submitter can object to the disclosure pursuant to paragraph (e) of this section.

(e) *Opportunity to object to disclosure.*

(1) If a submitter objects to disclosure, it must submit to the Department a detailed written statement specifying all grounds under Exemption 4 of the Act for denying access to the information, or a portion of the information sought.

(2) A submitter's failure to object to the disclosure by the deadline established by the Department in the notice provided under paragraph (d) of this section constitutes a waiver of the submitter's right to object to disclosure under paragraph (e) of this section.

(3) A submitter's response to a notice from the Department under paragraph (d) of this section may itself be subject to disclosure under the Act.

(f) *Notice of intent to disclose.* The Department considers a submitter's objections and submissions made in support thereof in deciding whether to disclose business information sought to be protected by the submitter. Whenever the Department decides to disclose information over a submitter's objection, the Department gives the submitter written notice, which includes:

(1) A statement of the reasons why the submitter's objections to disclosure were not sustained.

(2) A description of the information to be disclosed.

(3) A specified disclosure date that is a reasonable time subsequent to the notice.

(g) *Exceptions to notice requirements.* The notice requirements of paragraph (d) of this section do not apply if—

(1) The Department does not disclose the business information of the submitter;

(2) The Department has previously lawfully published the information;

(3) The information has been made available to the public by the requester or by third parties;

(4) Disclosure of the information is required by statute (other than the Act) or regulation issued in accordance with the requirements of Executive Order 12600 (52 FR 23781, 3 CFR, 1987 Comp., p. 235); or

(5) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, except that, in such case, the Department must provide the submitter with written notice of any final administrative disclosure determination in accordance with paragraph (f) of this section.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of a submitter's business information, the Department promptly notifies the submitter.

(i) *Corresponding notice to requester.* The Department notifies the requester whenever it notifies a submitter of its opportunity to object to disclosure, of the Department's intent to disclose requested information designated as business information by the submitter, or of the filing of a lawsuit.

(j) *Notice of reverse FOIA lawsuit.* Whenever a submitter files a lawsuit seeking to prevent the disclosure of the submitter's information, the Department promptly notifies the requester, and advises the requester that its request will be held in abeyance until the lawsuit initiated by the submitter is resolved.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

§ 5.12 Creation of agency records not required.

In response to a FOIA request, the Department produces only those agency records that are not already publicly available and that are in existence at the time it receives a request. The Department does not create new agency records in response to a FOIA request by, for example, extrapolating information from existing agency records, reformatting available information, preparing new electronic programs or databases, or creating data through calculations of ratios, proportions, percentages, trends, frequency distributions, correlations, or comparisons.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

§ 5.13 Preservation of agency records.

The Department does not destroy agency records that are the subject of a pending FOIA request, appeal, or lawsuit.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

Subpart C—Procedures for Requesting Access to Agency Records and Disclosure of Agency Records

§ 5.20 Requirements for making FOIA requests.

(a) *Making a FOIA request.* Any FOIA request for an agency record must be in writing (via paper, facsimile, or electronic mail) and transmitted to the Department as indicated on the Department's Web site. *See http://www.ed.gov/policy/gen/leg/foia/request_foia.html.*

(b) *Description of agency records sought.* A FOIA request must reasonably describe the agency record sought, to enable Department personnel to locate the agency record or records with a reasonable amount of effort. Whenever possible, a FOIA request should describe the type of agency record requested, the subject matter of the agency record, the date, if known, or general time period when it was created, and the person or office that created it. Requesters who have detailed information that would assist in identifying and locating the agency records sought are urged to provide this information to the Department to expedite the handling of a FOIA request.

(c) *FOIA request deemed insufficient.* If the Department determines that a FOIA request does not reasonably describe the agency record or records sought, the FOIA request will be deemed insufficient under the Act. In that case, the Department informs the requester of the reason the FOIA request is insufficient and, at the Department's option, either administratively closes the FOIA request as insufficient without determining whether to grant the FOIA request or provides the requester an opportunity to modify the FOIA request to meet the requirements of this section.

(d) *Verification of identity.* In compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, FOIA requests for agency records pertaining to the requester, a minor, or an individual who is legally incompetent must include verification of the requester's identity pursuant to 34 CFR 5b.5.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

§ 5.21 Procedures for processing FOIA requests.

(a) *Acknowledgements of FOIA requests.* The Department promptly notifies the requester when it receives a FOIA request.

(b) *Consultation and referrals.* When the Department receives a FOIA request for a record or records created by or otherwise received from another agency of the Federal Government, it either responds to the FOIA request after

consultation with the other agency, or refers the FOIA request to the other agency for processing. When the Department refers a FOIA request to another agency for processing, the Department will so notify the requester.

(c) *Decisions on FOIA requests.* The Department determines whether to comply with a FOIA request within 20 working days after the appropriate component of the Department first receives the request. This time period commences on the date that the request is received by the appropriate component of the Department, but commences no later than 10 calendar days after the request is received by the component of the Department designated pursuant to § 5.20(a) to receive FOIA requests for agency records. The Department's failure to comply with these time limits constitutes exhaustion of the requester's administrative remedies for the purposes of judicial action to compel disclosure.

(d) *Requests for additional information.* The Department may make one request for additional information from the requester and toll the 20-day period while awaiting receipt of the additional information.

(e) *Extension of time period for processing a FOIA request.* The Department may extend the time period for processing a FOIA request only in unusual circumstances, as described in paragraphs (e)(1) through (e)(3) of this section, in which case the Department notifies the requester of the extension in writing. A notice of extension affords the requester the opportunity either to modify its FOIA request so that it may be processed within the 20-day time limit, or to arrange with the Department an alternative time period within which the FOIA request will be processed. For the purposes of this section, unusual circumstances include:

(1) The need to search for and collect the requested agency records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and review and process voluminous agency records responsive to the FOIA request.

(3) The need to consult with another agency or two or more agency components having a substantial interest in the determination on the FOIA request.

(f) *FOIA Public Liaison and FOIA Requester Service Center.* The Department's FOIA Public Liaison assists in the resolution of disputes between the requester and the Department. The Department provides information about the status of a FOIA request to the requester through the Department's FOIA Requester Service Center. Contact information for the Department's FOIA Public Liaison and FOIA Requester Service Center may be found at *http://www.ed.gov/policy/gen/leg/foia/contacts.html.*

(g) *Notification of determination.* Once the Department makes a determination to grant a FOIA request in whole or in part, it notifies the requester in writing of its decision.

(h) *Denials of FOIA requests.*

(1) Only Departmental officers or employees delegated the authority to deny a FOIA request may deny a FOIA request on behalf of the Department.

(2)(i) The Department notifies the requester in writing of any decision to deny a FOIA request in whole or in part. Denials under this paragraph can include the following: A determination to deny access in whole or in part to any agency record responsive to a request; a determination that a requested agency record does not exist or cannot be located in the Department's records; a determination that a requested agency record is not readily retrievable or reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited processing.

(ii) All determinations denying a FOIA request in whole or in part are signed by an officer or employee designated under paragraph (h)(1) of this section, and include:

(A) The name and title or position of the denying officer or employee.

(B) A brief statement of the reason or reasons for the denial, including any exemptions applicable under the Act.

(C) An estimate of the volume of agency records or information denied, by number of pages or other reasonable estimate (except where the volume of agency records or information denied is apparent from deletions made on agency records disclosed in part, or providing an estimate would harm an interest protected by an applicable exemption under the Act).

(D) Where an agency record has been disclosed only in part, an indication of the exemption under the Act justifying the redaction in the agency record (unless providing this information would harm an interest protected by an applicable exemption under the Act).

(E) A statement of appeal rights and a list of requirements for filing an appeal under § 5.40.

(i) *Timing of responses to FOIA requests.*

(1) *Multitrack processing.*

The Department may use two or more processing tracks to distinguish between simple and more complex FOIA requests based on one or more of the following: the time and work necessary to process the FOIA request, the volume of agency records responsive to the FOIA request, and whether the FOIA request qualifies for expedited processing as described in paragraph (i)(2) of this section.

(2) *Expedited processing.*

(i) The Department gives expedited treatment to FOIA requests and appeals whenever the Department determines that a FOIA request involves one or more of the following:

(A) A circumstance in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(B) The urgent need of a person primarily engaged in disseminating information to inform the public about an actual or alleged Federal Government activity; or

(C) Other circumstances that the Department determines demonstrate a compelling need for expedited processing.

(ii) A requester may ask for expedited processing at the time of the initial FOIA request or at any time thereafter.

(iii) A request for expedited processing must contain a detailed explanation of the basis for the request, and must be accompanied by a statement certifying the truth of the circumstances alleged or other evidence of the requester's compelling need acceptable to the Department.

(iv) The Department makes a determination whether to grant or deny a request for expedited processing within 10 calendar days of its receipt by the component of the Department designated pursuant to § 5.20(a) to receive FOIA requests for agency records, and processes FOIA requests accepted for expedited processing as soon as practicable and on a priority basis.

(Authority: 5 U.S.C. 552(a), 20 U.S.C. 3474)

Subpart D—Fees

§ 5.30 Fees generally.

The Department assesses fees for processing FOIA requests in accordance with § 5.32(a), except where fees are limited under § 5.32(b) or where a waiver or reduction of fees is granted under § 5.33. Requesters must pay fees by check or money order made payable to the U.S. Department of Education, and must include the FOIA request number on the check or money order.

The Department retains full discretion to limit or adjust fees.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

§ 5.31 Fee definitions.

(a) *Commercial use request* means a request from or on behalf of a FOIA requester seeking information for a use or purpose that furthers the requester's commercial, trade, or profit interests, which can include furthering those interests through litigation. For the purpose of assessing fees under the Act, the Department determines, whenever reasonably possible, the use to which a requester will put the requested agency records.

(b) *Direct costs* mean those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use FOIA requests, reviewing) agency records to respond to a FOIA request. Direct costs include, for example, the pro rata salary of the employee(s) performing the work (*i.e.,* basic rate of pay plus 16 percent) and the cost of operating duplication machinery. The Department's other overhead expenses are not included in direct costs.

(c) *Duplication* means making a copy of the agency record, or of the information in it, as necessary to respond to a FOIA request. Copies can be made in several forms and formats, including paper and electronic records. The Department honors a requester's specified preference as to form or format of disclosure, provided that the agency record is readily reproducible with reasonable effort in the requested form or format.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To qualify as an educational institution under this part, a requester must demonstrate that an educational institution authorized the request and that the agency records are not sought for individual or commercial use, but are instead sought to further scholarly research. A request for agency records for the purpose of affecting a requester's application for, or prospect of obtaining, new or additional grants, contracts, or similar funding is presumptively a commercial use request.

(e) *Noncommercial scientific institution* means an institution that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A noncommercial scientific institution does not operate for a "commercial use", as the term is defined in paragraph (a) of this section. To qualify as a noncommercial scientific institution under this part, a requester must demonstrate that a noncommercial scientific institution authorized the request and that the agency records are sought to further scientific research and not for a commercial use. A request for agency records for the purpose of affecting a requester's application for, or prospect of obtaining, new or additional grants, contracts, or similar funding is presumptively a commercial use request.

(f) *Representative of the news media,* or *news media requester,* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. For the purposes of this section, the term "news" means information about current events or information that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals that qualify as disseminators of news and make their products available for purchase by, subscription by, or free distribution to the general public. To be regarded as a representative of the news media, a "freelance" journalist must demonstrate a solid basis for expecting publication, such as a publication contract or a past publication record. For inclusion in this category, a requester must not be seeking the requested agency records for a commercial use.

(g) *Review* means the examination of an agency record located in response to a FOIA request to determine whether any portion of the record is exempt from disclosure under the Act. Reviewing the record includes processing the agency record for disclosure and making redactions and other preparations for disclosure. Review costs are recoverable even if an agency record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure but does not include time spent resolving general legal or policy issues regarding the application of exemptions under the Act.

(h) *Search* means the process of looking for and retrieving agency records or information responsive to a FOIA request. Searching includes page-by-page or line-by-line identification of information within agency records and reasonable efforts to locate and retrieve information from agency records maintained in electronic form or format, provided that such efforts do not significantly interfere with the operation of the Department's automated information systems.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

§ 5.32 Assessment of fees.

(a) *Fees.* In responding to FOIA requests, the Department charges the following fees (in accordance with the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987)), unless it has granted a waiver or reduction of fees under § 5.33 and subject to the limitations set forth in paragraph (b) of this section:

(1) *Search.* The Department charges search fees, subject to the limitations of paragraph (b) of this section. Search time includes time spent searching, regardless of whether the search results in the location of responsive agency records and, if so, whether such agency records are released to the requester under the Act. The requester will be charged the direct costs, as defined in § 5.31(b), of the search. In the case of computer searches for agency records, the Department charges the requester for the direct cost of conducting the search, subject to the limitations set forth in paragraph (b) of this section.

(2) *Review.* (i) The Department charges fees for initial agency record review at the same rate as for searches, subject to the limitations set forth in paragraph (b) of this section.

(ii) No fees are charged for review at the administrative appeal level except in connection with—

(A) The review of agency records other than agency records identified as responsive to the FOIA request in the initial decision; and

(B) The Department's decision regarding whether to assert that an exemption exists under the Act that was not cited in the decision on the initial FOIA request.

(iii) Review fees are not assessed for FOIA requests other than those made for a "commercial use," as the term is defined in § 5.31(a).

(3) *Duplication.* The Department charges duplication fees at the rate of $0.20 per page for paper photocopies of agency records, $3.00 per CD for documents recorded on CD, and at the direct cost for duplication for electronic copies and other forms of duplication, subject to the limitations of paragraph (b) of this section.

(b) *Limitations on fees.*

(1) Fees are limited to charges for document duplication when agency records are not sought for commercial use and the request is made by—

(i) An educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or

(ii) A representative of the news media.

(2) For FOIA requests other than commercial use FOIA requests, the Department provides the first 100 pages of agency records released (or the cost equivalent) and the first two hours of search (or the cost equivalent) without charge, pursuant to 5 U.S.C. 552(a)(4)(A)(iv)(II).

(3) Whenever the Department calculates that the fees assessable for a FOIA request under paragraph (a) of this section total $25.00 or less, the Department processes the FOIA request without charge to the requester.

(c) *Notice of anticipated fees in excess of $25.* When the Department estimates or determines that the fees for processing a FOIA request will total more than $25 and the requester has not stated a willingness to pay such fees, the Department notifies the requester of the anticipated amount of fees before processing the FOIA request. If the Department can readily anticipate fees for processing only a portion of a request, the Department advises the requester that the anticipated fee is for processing only a portion of the request. When the Department has notified a requester of anticipated fees greater than $25, the Department does not further process the request until the requester agrees in writing to pay the anticipated total fee.

(d) *Charges for other services.* When the Department chooses as a matter of administrative discretion to provide a special service, such as certification of agency records, it charges the requester the direct cost of providing the service.

(e) *Charging interest.* The Department charges interest on any unpaid bill assessed at the rate provided in 31 U.S.C. 3717. In charging interest, the Department follows the provisions of the Debt Collection Act of 1982, as amended (Pub. L. 97–365), and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(f) *Aggregating FOIA requests.* When the Department reasonably believes that a requester, or a group of requesters acting together, is attempting to divide a FOIA request into a series of FOIA requests for the purpose of avoiding or reducing otherwise applicable fees, the Department may aggregate such FOIA requests for the purpose of assessing fees. The Department does not aggregate multiple FOIA requests involving unrelated matters.

(g) *Advance payments.*

(1) For FOIA requests other than those described in paragraphs (g)(2) and (g)(3) of this section, the Department does not require the requester to pay fees in advance.

(2) Where the Department estimates or determines that fees for processing a FOIA request will total more than $250, it may require the requester to pay the fees in advance, except where the Department receives a satisfactory assurance of full payment from a requester with a history of prompt payment of FOIA fees.

(3) The Department may require a requester who has previously failed to pay a properly assessed FOIA fee within 30 calendar days of the billing date to pay in advance the full amount of estimated or actual fees before it further processes a new or pending FOIA request from that requester.

(4) When the Department requires advance payment of estimated or assessed fees, it does not consider the FOIA request received and does not further process the FOIA request until payment is received.

(h) *Tolling.* When necessary for the Department to clarify issues regarding fee assessment with the FOIA requester, the time limit for responding to the FOIA request is tolled until the Department resolves such issues with the requester.

(i) *Other statutory requirements.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for producing particular types of agency records.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

§ 5.33 Requirements for waiver or reduction of fees.

(a) The Department processes a FOIA request for agency records without charge or at a charge less than that established under § 5.32(a) when the Department determines that—

(1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Disclosure of the information is not primarily in the commercial interest of the requester.

(b) To determine whether a FOIA request is eligible for waiver or reduction of fees pursuant to paragraph (a)(1) of this section, the Department considers the following factors:

(1) Whether the subject of the request specifically concerns identifiable operations or activities of the government.

(2) Whether the disclosable portions of the requested information will be meaningfully informative in relation to the subject matter of the request.

(3) The disclosure's contribution to public understanding of government operations, *i.e.,* the understanding of the public at large, as opposed to an individual or a narrow segment of interested persons (including whether the requester has expertise in the subject area of the FOIA request as well as the intention and demonstrated ability to disseminate the information to the public).

(4) The significance of the disclosure's contribution to public understanding of government operations or activities, *i.e.,* the public's understanding of the subject matter existing prior to the disclosure must be likely to be enhanced significantly by the disclosure.

(c) To determine whether a FOIA request is eligible for waiver or reduction of fees pursuant to paragraph (a)(2) of this section, the Department considers the following factors:

(1) The existence of the requester's commercial interest, *i.e.,* whether the requester has a commercial interest that would be furthered by the requested disclosure.

(2) If a commercial interest is identified, whether the commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) When the fee waiver requirements are met only with respect to a portion of a FOIA request, the Department waives or reduces fees only for that portion of the request.

(e) A requester seeking a waiver or reduction of fees must submit evidence demonstrating that the FOIA request meets all the criteria listed in paragraphs (a) through (c) of this section.

(f) A requester must seek a fee waiver for each FOIA request for which a waiver is sought. The Department does not grant standing fee waivers but considers each fee waiver request independently on its merits.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(4)(A), 20 U.S.C. 3474)

Subpart E—Administrative Review

§ 5.40 Appeals of adverse determinations.

(a) *In general.* A requester may seek an administrative review of an adverse

determination on the FOIA request made by the requester by submitting an appeal of the determination to the Department. Adverse determinations include denials of access to agency records, in whole or in part; "no agency records" responses; and adverse fee decisions, including denials of requests for fee waivers, and all aspects of fee assessments.

(b) *Appeal requirements.* A requester must submit an appeal within 35 calendar days of the date on the adverse determination letter issued by the Department or, where the requester has received no determination, at any time after the due date for such determination. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal. The requester's failure to comply with time limits set forth in this section constitutes exhaustion of the requester's administrative remedies for the purposes of initiating judicial action to compel disclosure.

(c) *Determination on appeal.* (1) The Department makes a written determination on an administrative appeal within 20 working days after receiving the appeal. The time limit may be extended in accordance with § 5.21(c) through (e). The Department's failure to comply with time limits set forth in this section constitutes exhaustion of the requester's administrative remedies for the purposes of initiating judicial action to compel disclosure.

(2) The Department's determination on an appeal constitutes the Department's final action on the FOIA request. Any Department determination denying an appeal in whole or in part includes the reasons for the denial, including any exemptions asserted under the Act, and notice of the requester's right to seek judicial review of the determination in accordance with 5 U.S.C. 552(a)(4). Where the Department makes a determination to grant an appeal in whole or in part, it processes the FOIA request subject to the appeal in accordance with the determination on appeal.

(Authority: 5 U.S.C. 552(a), 5 U.S.C. 552(a)(6), 20 U.S.C. 3474)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0021]

RIN 2127–AK05

Federal Motor Vehicle Safety Standards; Electric-Powered Vehicles; Electrolyte Spillage and Electrical Shock Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to a petition for rulemaking from the Alliance of Automobile Manufacturers, NHTSA is issuing this final rule to facilitate the development and introduction of fuel cell vehicles, a type of electric-powered vehicle, and the next generation of hybrid and battery electric powered vehicles. It does so by revising the agency's standard regulating electrolyte spillage and electrical shock protection for electric-powered vehicles to align it more closely with the April 2005 version of the Society of Automotive Engineers (SAE) Recommended Practice for Electric and Hybrid Electric Vehicle Battery Systems Crash Integrity Testing (SAE J1766).

The standard currently requires manufacturers to design their vehicles so that, in the event of a crash, a vehicle's propulsion battery system will be electrically isolated from the vehicle's electricity-conducting structure. As amended, this rule provides greater flexibility, requiring manufacturers to design their electrically powered vehicles so that, in the event of a crash, the electrical energy storage, conversion, and traction systems are either electrically isolated from the vehicle's chassis or their voltage is below specified levels considered safe from electric shock hazards.

Since the physiological impacts of direct current (DC) are less than those of alternating current (AC), this rule specifies lower electrical isolation requirements for certain DC components than for AC components. The current standard does not recognize the difference in safety risk between DC and AC components, requiring both types of components to meet the same requirements. As requested by the petitioners, this final rule specifies the following electrical isolation requirements: 500 ohms/volt for AC and DC high voltage sources and 100 ohms/volt for DC high voltage sources with continuous monitoring of electrical isolation.

DATES: *Effective Date:* This rule is effective September 1, 2011, with optional early compliance.

ADDRESSES: *Petitions:* Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Mr. Charles Hott, Office of Rulemaking, by telephone at (202) 366–0247, or by fax at (202) 493–2990. For legal issues, you may contact Ms. Rebecca Yoon, Office of Chief Counsel, by telephone at (202) 366–2992, or by fax at (202) 366–3820. You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Standard No. 305 and the Alliance Petition for Rulemaking To Upgrade It

The purpose of Federal Motor Vehicle Safety Standard (FMVSS) No. 305, *Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection,* is to reduce deaths and

injuries during a crash which occur because of electrolyte spillage from propulsion batteries, intrusion of propulsion battery system components into the occupant compartment, and electric shock. FMVSS No. 305 currently does so in part by requiring electric-powered vehicles to limit electrolyte spillage and retain batteries. To promote electrical safety, it specifies a single criterion, *i.e.,* maintaining electrical isolation between the vehicle's electrical conducting structure and high voltage battery system. In order to protect vehicle occupants, rescue workers, or others who may come in contact with the vehicle after a crash from electrical shock hazards, FMVSS No. 305 currently requires an electrical isolation of 500 ohms/volt between the propulsion batteries and the vehicle's electrical conducting structure after the frontal, side, and rear crash tests of FMVSS Nos. 208, *Occupant Crash Protection,* 214, *Side Impact Protection,* and 301, *Fuel System Integrity,* respectively. The standard currently does not require electrical isolation between other potential high voltage sources that may cause a shock hazard, such as high voltage propulsion motors, fuel cells, inverters, and converters. Also, the standard's 500 ohms/volt isolation requirement does not distinguish between AC and DC systems, despite a difference in human tolerance for the two types of electrical current.

FMVSS No. 305 was originally drafted based on a voluntary consensus standard, the Society of Automotive Engineers (SAE) Recommended Practice for Electric and Hybrid Electric Vehicle Battery Systems Crash Integrity Testing, SAE J1766 (1998 version). SAE J1766 was updated in April 2005 to accommodate current fuel cell vehicle (FCV) designs that were deemed by their manufacturers to be electrically "safe," but that were unable to meet existing electrical isolation requirements. Their inability stemmed from the fact that the liquid coolant needed in those FCV designs to cool the fuel cells tended to increase in conductivity over time, which resulted in the loss of electrical isolation of high voltage components in contact with it and thus prevented those vehicles from maintaining the 500 ohms/volt electrical isolation from the vehicles' electrical conducting structure.

The updated version of SAE J1766 differs from the previous version in two main ways. Instead of only one criterion for promoting electrical safety, it specifies three different alternative criteria: electrical isolation, low voltage, and low energy. It also specifies a revised isolation requirement that distinguishes between AC and certain DC systems.

The Alliance of Automobile Manufacturers ("the Alliance") petitioned NHTSA to conduct a rulemaking to amend the requirements of FMVSS No. 305 in order to bring the standard into alignment with the updated version of SAE J1766. The Alliance argued that such upgrades to FMVSS No. 305 were necessary so that continued development of FCVs could proceed without hindrance.

B. The NPRM

On October 9, 2007, NHTSA published the Notice of Proposed Rulemaking (NPRM) to upgrade FMVSS No. 305, mostly in line with the revised SAE J1766.[1] *The highlights of the NPRM were:*

- Distinguishing between electrical isolation values for DC and AC currents based on relative risk of harm to accommodate fuel cell vehicles and setting the value for DC high voltage systems at 125 ohms/volt.
- Broadening the requirement in S5.3 from "electrical isolation" alone to "electrical safety," and permit achieving compliance either through electrical isolation or through a low voltage option under which the post-crash voltage of the source must be less than or equal to 60 volts of direct current (VDC) or 30 volts of alternating current (VAC).
- Adding a definition for "high voltage source," and applying electrical safety requirements to any high voltage source, instead of to only the propulsion battery.
- Harmonizing the rear moving barrier impact test conditions of S6.2 and S7.4 of FMVSS No. 305 with the revised FMVSS No. 301.

C. Summary of Public Comments Received

Most of the comments received by the agency were from vehicle manufacturers. The Alliance of Automobile Manufacturers (Alliance) and the Association of International Automobile Manufacturers (AIAM) filed comments jointly (this final rule refers to these as the "Alliance/AIAM comments"). The Alliance also filed supplemental comments on June 15, 2009. Four vehicle manufacturers submitted comments individually: Nissan North America, Inc. ("Nissan"), Porsche Cars North America, Inc. ("Porsche"), Toyota Motor Corporation ("Toyota"), and Honda Motor Co., Ltd. ("Honda"). The American Association of Justice ("AAJ," formerly known as the Association of Trial Lawyers of America or ATLA) also submitted comments on the NPRM.

In summary, the vehicle manufacturers generally requested that the agency conform FMVSS No. 305 more closely to the revised SAE J1766. Commenters disagreed with the proposed level of electrical isolation for DC high voltage systems as unnecessarily stringent, and with the omission of proposed regulatory text adopting SAE J1766's monitoring requirement. Regarding the alternative compliance options for providing electrical safety, commenters expressed support for the addition of an option limiting residual electrical energy, as well as an explicit low voltage option. Commenters also raised issues regarding test procedures, including requesting a provision expressly addressing the use of a megohmmeter for electrical isolation measurement. Commenters also suggested changes to the regulatory text, many of which were fairly editorial in nature.

The AAJ objected to the agency's brief discussion in the NPRM of the law relating to the circumstances under which State tort law might be found by a court to be impliedly preempted. Interpreting this discussion as an assertion of implied preemption of state tort law in connection with this particular rulemaking, the AAJ objected to the discussion just as it has objected to similar discussions in other NHTSA rulemaking actions over the last several years.

D. How the Final Rule Differs From the NPRM

The following points highlight the key differences between the requirements of the final rule and the proposed requirements in the NPRM:

- S5.3 has been revised to require 100 ohms/volt electrical isolation for DC systems with continuous monitoring of electrical isolation during vehicle operation, rather than the more conservative value of 125 ohms/volt proposed in the NPRM, based on new analysis of available data.
- S5.3 has been revised to include an explicit low voltage option for providing electrical safety. A new paragraph, S7.7, has been added that details a procedure for voltage measurement to determine if the voltage source is of low voltage.
- A new paragraph, S5.4, has been added to specify requirements for vehicles equipped with electrical isolation monitoring systems. A new paragraph, S8, has been added that details a test procedure to confirm the

[1] 72 FR 57261 (Oct. 9, 2007). The NPRM and comments on it can be found in Docket No. NHTSA–2007–28517. That docket can be accessed online at *http://www.regulations.gov.*

functioning of the isolation monitoring system.

- S3 and S4 now clarify that "working voltage" is used (as opposed to actual voltage only) to identify a vehicle as subject to FMVSS No. 305 and to identify a source as "high voltage."
- S7.6.6 and S7.6.7 are modified to specify that the electrical isolation of a high voltage source in ohms/volt is obtained by dividing the electrical isolation resistance of the high voltage source by its working voltage.
- Some definitions of terms used in FMVSS No. 305 have been added or altered for greater clarity.
- Minor editorial corrections have been made to other parts of the regulatory text and to Figures 1 through 5.

The final rule also notes that there has been a fundamental misunderstanding of its preemption discussions and emphasizes that neither in the FMVSS No. 305 NPRM nor in any of the other actions identified by the AAJ did this agency assert implied preemption.

II. Public Comments on the NPRM and Agency Responses

A. Multiple Options for Providing Electrical Safety in Electric-Powered Vehicles

As discussed above, the NPRM proposed to expand the ways in which electrical safety may be provided under FMVSS No. 305, based on the changes to SAE J1766 to accommodate current FCV designs. This was accomplished in part by proposing a definition for a new term, "electrical safety," (which included "electrical isolation"), and separate requirements for electrical isolation of AC systems and DC systems. It did not include some methods of providing "electrical safety" that the SAE definition does, namely, an electrical energy option requiring that there be less than 0.2 Joules of energy, and a method of using low voltage readings directly as a means of compliance. The NPRM also proposed an isolation value of 125 ohms/volt for DC systems, instead of the 100 ohms/volt with continuous monitoring contained in SAE J1766. Comments received on these issues from vehicle manufacturers primarily took exception to the agency's departure from the SAE J1766 language.

1. Electrical Isolation

The NPRM proposed 125 ohms/volt isolation for DC systems, a value more conservative than the 100 ohms/volt contained in SAE J1766 and recommended by the petitioner. We proposed 125 ohms/volt instead of 100 ohms/volt because our analysis indicated that limiting DC to 125 ohms/volt offered the same level of protection against shock hazards as limiting AC to 500 ohms/volt. We used graphs from International Electrotechnical Commission (IEC) Technical Reports,[2] available as part of the technical support document for this rule which is located in the docket, showing physiological effects resulting from different durations of current flow, and made a simple comparison. Based on the IEC report, the human body can withstand up to four times the amount of DC as AC. The 500 ohms/volt requirement in FMVSS No. 305 translates to 2 milliamps of AC.[3] The flow of this amount of AC through the human body may result in perception of the current and likely involuntary muscular contractions, but usually with no harmful physiological effects, and is considered to be safe. Based on the ratio of 4 between DC and AC current, 2 milliamps (mA) of AC (that is considered to be safe) corresponds to 8 mA of DC (that is also considered to be safe for the human body).[4] The agency also did not propose monitoring of isolation, but noted that the petitioner's request for an isolation value of 100 ohms/volt for DC was coupled with a request for continuous monitoring.

(a) Requirements for Electrical Isolation of AC and DC Systems

The Alliance/AIAM comments disagreed with the agency's proposal to adopt an isolation requirement of 125 ohms/volt instead of 100 ohms/volt for DC high voltage systems. The Alliance/AIAM argued that the IEC technical report relied upon by the agency defines the equivalence factor of four (as in, the human body can withstand up to four times the amount of DC as AC) *only* in terms of ventricular fibrillation, and that there is "no technical justification" for applying that particular equivalence factor to levels of current that would cause physiological responses less serious than ventricular fibrillation. The Alliance/AIAM stated that a representative from General Motors consulted with the IEC Working Group responsible for IEC 479–1, and that the Working Group "declined to identify a precise level of DC isolation that would equate to 500 ohms/volt for AC," stating that the group would only say that "a point in the mid-range of AC zone 2 is approximately equivalent to a point in the mid-range of DC zone 2."

The Alliance/AIAM argued that, instead of trying to ascertain a level of DC isolation that is precisely equivalent to 500 ohms/volt AC isolation, the agency should simply "adopt a level of DC isolation that is practicable and meets the need of motor vehicle safety." The Alliance/AIAM stated that 100 ohms/volt DC met those criteria, because it is located in the mid-range of zone 2 and thus "far removed from the potentially life-threatening effects associated with zone 4 currents and durations." The Alliance/AIAM also stated that 100 ohms/volt DC was even safer compared to 500 ohms/volt AC, according to revised IEC charts (the IEC report on which the agency relied was updated in July 2005, after the petition for rulemaking was submitted to NHTSA).[5]

The Alliance/AIAM also argued that 100 ohms/volt would be a good choice for a DC isolation value for harmonization reasons, because it "is specified in the relevant SAE document, ISO document, Japanese regulation, and draft ECE regulation."

Agency response:

The agency has re-analyzed the appropriate value for DC isolation based on the charts provided in the IEC reports. Our new analysis indicates that an isolation value of 100 ohms/volt for DC represents an appropriate level of isolation.

We agree that given the available data and the differing natures of the two kinds of electrical current, no one can determine *exactly* what DC isolation value would be perfectly equivalent to 500 ohms/volt AC. However, this does not alleviate the agency's responsibility to make the best possible estimate. We cannot simply choose, as the Alliance/AIAM would have us do, an isolation limit for DC that "is practicable and meets the need of motor vehicle safety." These are necessary conditions for every

[2] IEC TS 60479–1 and TS 60479–2 Effects of Current on Human Beings and Livestock—Part 1: General Aspects, Part 2: Special Aspects, 2005–07, Reference Nos. CEI/IEC/TS 60479–1:2005 and CEI/IEC/TS 60479–2:2005. These IEC documents are available for public viewing in the Office of Crashworthiness Standards, National Highway Traffic Safety Administration, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, or available for purchase at *http://webstore.iec.ch/webstore/webstore.nsf/artnum/034455* (last accessed June 19, 2009).

[3] 500 ohms/volt = 1/I, where I is the current in amperes (A). Then I = 1/500 = 0.002 A or 2 mA.

[4] 8 mA = 0.008 A = V/R (current = voltage/resistance). 1/0.008 = 125 ohms/volt. *See* 72 FR 57262 (Oct. 9, 2007) for a fuller discussion of this issue.

[5] Specifically, the Alliance/AIAM argued that if the agency's concern is the distance of the separation of the isolation value from the nearest point of zone 3 (on the charts), 100 ohms/volt DC continues to provide 15 milliamps of separation from the nearest point of DC zone 3, while 500 ohms/volt AC provides only 3 milliamps of separation from the nearest point of AC zone 3 (but provided 8 milliamps of separation before), due to revision of the charts.

agency rule, but they do not guarantee that such a limit for DC isolation would offer an equivalent level of safety as the limit for AC isolation. In light of the comments submitted, the agency took a fresh look at what level of DC isolation would offer an equivalent level of safety. A fuller explanation of the agency's analysis for this final rule is available in the docket for this rulemaking.

We used the Alliance/AIAM reference to the IEC Working Group statement that "a point in the mid-range of AC zone 2 is approximately equivalent to a point in the mid-range of DC zone 2" as a starting point for our re-analysis. By definition, "zone 2" of both the AC and DC charts represents very similar physiological response to electrical current.[6] Since zones AC–2 and DC–2 represent such similar physiological responses, the agency assumed, for purposes of analysis, that the responses at the upper and lower boundaries of the zones are the same, which allowed us to find appropriate points in the "mid-range" of the zones to compare for equivalence. The upper and lower boundary of zone 2 at 10 second shock duration for AC current is at 5 and 0.5 mA, respectively, and that for DC current is at 26 and 2 mA, respectively.[7] Assuming a logarithmic relationship between zone AC–2 and zone DC–2, the agency interpolated linearly between these upper and lower boundaries of each zone at 10 second shock duration. The resulting relationship between AC and DC levels in Zone 2 at 10 second shock duration is given by log(DC current in mA) = 1.114 * log(AC current mA) + 0.636. Given that an electrical isolation of 500 ohms/volt AC corresponds to 2 mA AC current, and using the mapping between AC and DC current levels in zone 2, the agency determined that the DC current level corresponding to 2 mA of AC current is 9.37 mA DC, which translates to 107 ohms/volt DC.[8] Therefore, the agency's best estimate for purposes of this final rule was reduced from 125 to 107 ohms/volt DC as equivalent to 500 ohms/volt AC. Since the 107 ohms/volt isolation value is only slightly more conservative than the 100 ohms/volt DC isolation value already contained in SAE J1766 and in several international standards, as mentioned by the commenters, we are comfortable that setting the DC electrical isolation value for the final rule at 100 ohms/volt will provide an equivalent level of safety to the 500 ohms/volt requirement for AC isolation.

(b) Continuous Monitoring Requirement for Electrical Isolation

The Alliance petition for rulemaking had argued that an isolation level of 100 ohms/volt for DC was safe when coupled with a requirement that isolation be continuously monitored. In the NPRM, NHTSA set the isolation level for DC at 125 ohms/volt without addressing the issue of continuous monitoring. The Alliance/AIAM comments to the NPRM stated that "it would be preferable to the interests of safety and the viability of fuel cell vehicles for the agency to specify an isolation level of 100 ohms/volt [DC] with monitoring rather than an isolation level of 125 ohms/volt without monitoring." This is simply because, the commenters stated, "electrical isolation declines in service, particularly DC isolation associated with a fuel cell stack," and while "It is not difficult for a new fuel cell vehicle to exhibit * * * 100 ohms/volt isolation while in service," it "is far more challenging * * * for a fuel cell vehicle to maintain 100 ohms/volt isolation while in service." The Alliance/AIAM expressed concern that setting an isolation requirement of 125 ohms/volt for DC with no continuous monitoring would not solve the problem of declining isolation over time.

Agency response:

Although NHTSA did not propose regulatory text for a requirement for continuous monitoring in the NPRM, we noted there that the petitioner's request for an isolation value of 100 ohms/volt for DC was coupled with a request for continuous monitoring. We have considered the issue further and we agree with the Alliance/AIAM comments stating that if the problem for fuel cell stacks is declining electrical isolation over time, solving the problem requires continuous monitoring of electrical isolation for high voltage DC sources that certify compliance by the 100 ohms/V electrical isolation option. We have specified this requirement in S5.3(a). In addition, the agency is adding a new paragraph, S5.4, to the regulatory text to specify that the electrical isolation monitoring system must continuously monitor the level of isolation, and display a warning to the driver if electrical isolation degrades to levels below the minimum required electrical isolation of 100 ohms/volt. We are also adding a test procedure to confirm the function of the electrical isolation monitoring system in S8.

(c) Timing of Measurements for Electrical Isolation

Comments from the Alliance/AIAM and from Porsche expressed concern that the agency intended to require electrical isolation to be measured within 5 seconds after the vehicle crashes. The commenters requested that S5.3 be revised to include a sentence at the end of the paragraph stating that "While electrical isolation can be provided 'within 5 seconds,' as it does not change over time, it is not necessary to actually measure it 'within 5 seconds.'"

Agency response:

The agency had no intent to require measurements to be taken within 5 seconds, and S7 of the proposed regulatory text, which covers test conditions, clearly states that all measurements for calculating electrical isolation will be made *after a minimum of 5 seconds* immediately after the required crash tests. We do not believe that revising S5.3 to explain this further is necessary, but we are revising S7 in the final rule to clarify that we consider time zero for measurements to be when the test vehicle comes to rest, instead of "immediately after" the tests. We believe that this addresses the concerns of the Alliance/AIAM and Porsche.

2. Voltage Level

The existing FMVSS No. 305 essentially only allows manufacturers to prove that their vehicles are electrically safe by satisfying electrical isolation requirements, using an equation provided in FMVSS No. 305. As written, the equation includes dividing voltage measurements by one another, such that it is possible to end up with an undefined result if the voltage measurement that goes in the denominator is zero. An undefined result, theoretically, could prevent manufacturers from certifying that they meet the electrical isolation requirements.

As noted above, in the NPRM, the agency did not explicitly provide for low voltage as a method of certifying electrical safety protection. We stated instead that "We tentatively agree [that a voltage measurement of zero] would be evidence of electrical safety," and proposed to change the "electrical isolation" requirement of S5.3 to a broader one of "electrical safety," and to require the specified electrical isolation between the chassis and the high voltage source. We believed that this

[6] Table 11 of IEC TS 60479–1 (2005) states that the physiological response for AC–2 is "Perception and involuntary muscular contractions likely but usually no harmful electrical physiological effects," while Table 13 states that the physiological response for DC–2 is "Involuntary muscular contractions likely especially when making, breaking or rapidly altering current flow but usually no harmful electrical physiological effects."

[7] Based on Figures 20 and 22 of IEC TS 60479–1 (2005).

[8] 9.37 milliamps = 0.00937 Amps; 1/0.00937 = 107 ohms/volt.

was sufficiently clear evidence of the agency's position that low voltage was an acceptable way to provide electrical safety.

However, comments by the Alliance/AIAM argued that our statements were "ambiguous," and reiterated their position that a reading of zero voltage after the crash test would make it impossible to certify vehicles under the electrical isolation requirements. The Alliance/AIAM stated that, as written, the approach in the NPRM would be "susceptible to misinterpretation in the context of varying and highly integrated vehicle designs. For example, a portion of the high voltage bus might meet the definition of high voltage source, but then have its voltage removed or dissipated during the specified crash tests." To avoid this, the commenters requested that S5.3 include a specific low voltage alternative. Porsche supported the Alliance/AIAM comments.

Related to the request that NHTSA explicitly include a low voltage option for providing electrical safety, the Alliance/AIAM also requested that that the agency revise S7.6.3, the electrical isolation test procedure, to state that if the voltage is less than or equal to 60 VDC or 30 VAC, the "requirements are met and there is no need to proceed further."

Nissan, in addition to supporting the Alliance/AIAM comments, asked that the agency adopt an additional alternative for measuring voltage, "to mirror SAE Recommended Practice J1766." Specifically, "in addition to measuring the voltage between the vehicle chassis and high voltage source," Nissan asked that the alternative option "would measure Vb (after the crash test) at the positive and negative nodes, around the load, of the high voltage bus." Nissan also asked whether our intent in defining AC high voltage sources was to include sources that "relate to the regenerative braking mode of the vehicle where the AC electric motor behaves as an energy source to recharge the high voltage battery."

Agency response:

NHTSA agreed in the NPRM in principle to the concept that low voltage can provide electrical safety, and provided a letter of interpretation in October 2008 (between the publication of the NPRM and this final rule) confirming that, based on the information provided, the agency would consider a vehicle to have passed S5.3 of FMVSS No. 305 when there is no measurable voltage following a crash test.[9] Nevertheless, in order to alleviate the commenters' concern that manufacturers would still have to attempt to meet the electrical isolation requirement with an undefined answer to the equation in S7, the agency is adding the low voltage option to S5.3 and corresponding sections to the test procedure portion of the regulatory text at S7 and S7.7. Given that we are adding an explicit low voltage option to S5.3 and low voltage test procedures to S7, we do not think it necessary to adopt the Alliance/AIAM recommendation that S7.6.3 be revised as requested.

As part of including a low voltage option in S5.3, the agency is requiring that voltage be measured across the terminals of the voltage source and between the voltage source and the vehicle chassis electrical conducting structure. The voltage source is considered to be low voltage if the voltage measured across its terminals *and* the voltage measured between the vehicle chassis electrical conducting structure *and* the positive and negative terminals of the source are all less or equal to 60 VDC or 30 VAC. Measuring the voltage across the terminals of the voltage source and between the terminals and the vehicle chassis ensures that all potential high voltage sources in both closed and open circuit conditions are captured. The agency believes that this will address Nissan's request that voltage be measured between the positive and negative nodes in addition to measuring the voltage between the high voltage source and the vehicle chassis.

Regarding Nissan's request for clarification about whether regenerative braking motors would be considered a high voltage source, we would consider all sources which have a potential beyond 30 VAC to be AC high voltage sources, including sources relating to the regenerative braking mode of vehicles.

3. Energy Limit (0.2 Joules)

The NPRM did not propose an energy limit option as a method of providing electrical safety, even though SAE J1766 includes one, because the agency did not believe that there was a clear safety need for this additional option. We did, however, seek comment on what safety need might exist, as well as on the practicality of measuring such a small amount of energy in a crash test environment.

The Alliance/AIAM comments submitted in December 2007 argued that a low-energy alternative to providing electrical safety is necessary in FMVSS No. 305 because of the y-capacitors in a fuel cell system. As noted in the NPRM, a capacitor is like a battery in that it stores electrical energy and poses the same electrical safety hazards as a battery, except for electrolyte spillage. The December 2007 Alliance/AIAM comments did not explain the function of x- and y-capacitors in fuel cells. In electrical power distribution, x-capacitors are placed across lines of high voltage differential, while y-capacitors are used in-line. A common application of x- and y-capacitors is filtering of electromagnetic or radio frequency interference, where they are directly connected to the AC power line. They may also be used to suppress electrical noise generated by motors and other components. We assume, for purposes of answering the Alliance/AIAM comment, that x- and y-capacitors are used in some kind of current filtering application in fuel cells.

When coolant flows in a fuel cell, the voltage across individual y-capacitors in the fuel cell becomes asymmetrical. The Alliance's supplemental June 2009 comments stated that this asymmetry in the voltage is, in fact, directly related to the coolant loop in a fuel cell, and that the asymmetry is likely to increase as coolant designs become more efficient. Thus, when x-capacitors in the fuel cell system discharge in the event of a crash, that discharge will leave a residual voltage (sometimes in excess of 60 VDC) on the y-capacitors. The Alliance's supplemental comments explained that as y-capacitor asymmetry increases in FCV designs with more efficient coolants, it could take as much as 10 or 20 seconds for the voltage to dissipate below the low voltage threshold of 60 VDC. However, the Alliance argued that this residual voltage on the y-capacitors would not pose a safety risk because the total energy levels would be very small. The Alliance, Toyota, and Ford told the agency in ex parte communications[10] between the NPRM and the final rule that it would be difficult to provide electrical safety for certain high voltage sources in FCVs using the electrical isolation option because of this coolant-loop-related issue.

The Alliance/AIAM also commented on the agency's request for explanations of the practicality of measuring 0.2 Joules of energy in a crash test environment. NHTSA had stated in the NPRM that the SAE low-energy option

[9] *See* Letter to Mr. Kenneth N. Weinstein, October 28, 2008. *Available at* Docket No. NHTSA–2008–0203–0003.

[10] Records of these ex parte communications are available in the docket for the NPRM for this rule, Docket No. NHTSA–2008–28517.

of 0.2 Joules or less based on 10 ms of contact did not seem realistic in terms of an automobile crash. The Alliance/AIAM initially argued in response that SAE had not based the 0.2 Joules limit specifically on 10 ms of contact, but rather had been looking for the minimum level of energy that might be harmful at *any* duration of contact, which was the border of zones 2 and 3 on the IEC charts. The border of zones 2 and 3 (for a body current of 200 mA and a source of 200 VDC) ended up being 0.4 Joules at 10 ms of contact, such that anything less than 0.4 Joules for any duration of contact would be in or below zone 2, and therefore safe from ventricular fibrillation. SAE then applied a safety factor of 2 to get 0.2 Joules at 10 ms of contact.

However, in their June 2009 supplemental comments, the Alliance presented a different approach to determining acceptable levels of electric energy. The Alliance argued that for current durations less than 2 seconds, no serious damage is observed with sufficiently low energy, even if the current passing through the body is relatively high. They explained that body current with durations less than 10 msec have little effect on involuntary muscular contraction. Therefore, the target threshold in this analysis used by the Alliance was intended to prevent ventricular fibrillation, and not just minimize muscular contraction. The commenter stated that according to paragraph 4.6 of the IEC 60429–1, the lowest level of human body impedance is 500 ohms.

Applying this value of human body impedance along with the human body tolerance zones in Figure 22 of IEC 60429–1 and Figure 20 of IEC 60429–2, the Alliance then computed the body current for a given time duration for which the energy is 0.2 Joules and 0.5 Joules. The commenter stated that in all instances, this line of 0.2 Joules energy plotted on Figure 22 of the IEC 60429–1 would be within zone 2, except at the 10 msec current duration, where the line is at the border of DC–2 and DC–3 corresponding to 200 mA of body current. In addition, the line of 0.5 Joules energy intersects the border of DC–3 and DC–4.1 (representing a 5 percent risk of ventricular fibrillation) for approximately 500 mA body current at 4.3 msec duration (Figure 20 of IEC 60429–2). The Alliance argued that based on this analysis, the 0.2 Joules energy limit has a safety factor of 2.5 to prevent 5 percent risk of ventricular fibrillation.

And finally, the Alliance/AIAM comments also argued that the agency's concern about measuring 0.2 Joules of energy in a crash test environment was misplaced, because energy can be "easily and accurately calculated from the equation that energy (in Joules) = 0.5 * c * v^2, where c is the capacitance of the capacitor(s) in farads and v is the measured voltage." The Alliance/AIAM stated that "Manufacturers routinely measure the voltage and calculate the associated energy without difficulty."

Agency response:

Despite the Alliance/AIAM and Alliance's supplemental comments on this issue, NHTSA remains unpersuaded that a low-energy option of 0.2 Joules for providing electrical safety is necessary for FMVSS No. 305 at this time. Commenters have not provided any data that current FCVs or hybrid electric vehicles are unable to certify to the electrical safety requirements because of residual high voltage in the y-capacitors. Their arguments are based entirely on theoretical values.

In addition, we remain unconvinced that a low energy option is necessary and have concerns about the disparity between the level of safety provided by 0.2 Joules of energy and the electrical isolation requirement. The agency conducted its own analysis using the approach presented in the December 2007 Alliance/AIAM comments submission with several permutations of body current, body resistance, current duration, and safety factors to try to determine safe energy limits. Based on that analysis, the agency determined that applying different permutations of voltage levels, body resistance, shock duration, and factor of safety can result in different safe energy levels, some of which are less than the 0.2 J energy level specified in SAE J1766.

Given that the IEC report indicates that the lowest human body impedance is a resistance of 500 ohms, and that the boundary between zones DC–2 and DC–3 is 200 mA of body current for 10 msec shock duration, we determined the corresponding amount of voltage through the Ohm's Law equation Current (A) * Resistance (ohms) = Voltage (V), in this case, 0.2 A * 500 ohms = 100 V. We then applied the same method used in SAE J1766 to calculate energy for a 10 msec shock duration with the equation Voltage (V) * Current (A) * Time (s) = Energy (J), in this case, 100 V * 0.2 A * 0.01 s = 0.2 J (or, equivalently, 200 mJ). The SAE applied a safety factor of 2. Doing the same for 200 mJ, the agency concluded that a safe energy level would correspond to 100 mJ—half the energy level specified in J1766 and recommended by Alliance/AIAM. Following the same procedure, for a voltage source of 65V and body resistance of 500 ohms, the body current was 130 mA, and the corresponding energy was 84.5 mJ.[11] Applying a factor of safety of 2, the safe energy level was 42.2 mJ. Even without applying a factor of safety, the energy level is less than half of that recommended by the Alliance/AIAM. Based on this analysis, the agency concluded that the assumptions associated with voltage, current, and shock duration used to derive the proposed limit of 0.2 J for the energy option are not well supported.

Based on their assumptions, the Alliance's approach to determine minimum allowable energy levels presented in the June 2009 supplemental comments would allow body currents of 20 mA for shock duration of 1 second, 28 mA for shock duration of 0.5 seconds, and 200 mA for shock duration of 10 msec. In contrast, the electrical isolation option of FMVSS No. 305 does not allow more than 10 mA of body current at either 1 second, 0.5 seconds, or 10 msec shock duration.

Additionally, the Alliance/AIAM comments recognized that according to the IEC Technical Committee 64, a point in the mid-range of AC zone 2 is approximately equivalent to point in the mid-range of DC zone 2. The 28 mA of body current for a duration of 0.5 seconds that would be allowed by the low-energy option expressed by commenters is *not* in the mid-range of zone 2. It is, in fact, significantly closer to the border of zone 2 and zone 3, which indicates a higher level of risk for shock than the electrical isolation option of FMVSS No. 305. The agency thus believes that using a safety factor of 2.5 to protect against ventricular fibrillations in the low-energy option, as the Alliance supplemental comments suggest, would result in a higher risk level than that provided by the electrical isolation option of FMVSS No. 305, which protects against involuntary muscular contractions without any harmful physiological effects. Moreover, the Alliance has provided no technical basis for the assumption that for current durations less than 2 seconds, no serious damage is observed with sufficiently low energy even if the current passing through the body is relatively high. The IEC charts clearly indicate that shock duration for one second is sufficiently long to cause involuntary muscular contractions, which are currently mitigated through the electrical isolation requirement of FMVSS No. 305.

As for commenters' suggestion that the agency need not require measurement for the low energy option

[11] 0.13 A = 65/500; 0.0845 J = 65 * 0.13 * 0.01.

and could simply make a calculation to verify compliance, the agency does not regard the Alliance/AIAM solution of calculating energy to be practicable for our purposes. The effective capacitance of a high voltage DC source will depend on the capacitance of individual capacitors in the source, the configuration of these capacitors, and the open/closed status of the contactors. This information is specific for each vehicle crash test, which means that the manufacturer-supplied capacitance value may be different from the effective capacitance after the crash test. Therefore, the computed energy of a high voltage source using the method recommended by Alliance/AIAM may not represent the true energy of the source after a crash test. Given the practical difficulties that we continue to see with including a low-energy option for providing electrical safety, and given the results of our analysis which shows that the energy option requested by commenters would be less stringent and pose a greater risk of electric shock hazard than the electrical isolation option, the agency is not including the low-energy option for providing electrical safety in the final rule.

B. Other Issues Relating to the Electrical Isolation Requirement

In the current FMVSS No. 305, sections S7.6.6 and S7.6.7 provide a method of computing electrical isolation in ohms/volt. However, in the NPRM, the agency inadvertently omitted specifying the method of determining electrical isolation in ohms/volts from the calculated isolation resistance. The Alliance/AIAM comments requested that the agency re-include similar language for S7.6.6 and S7.6.7 in the final rule, so that FMVSS No. 305 remains "clear that nominal operating voltage is the applicable voltage for calculating the electrical isolation requirement." Along the same lines, the Alliance/AIAM requested that the agency add the word "nominal" in front of the word "volts" in S3, to ensure that the standard is addressing "nominal voltage."

The Alliance/AIAM comments also requested an alternative method of electrical isolation testing to the existing "additional resistance insertion" method, namely, use of a megohmmeter.[12] The Alliance/AIAM argued that use of a megohmmeter was a valid alternative, and that Japanese and International Standards Organization (ISO) regulations both allow it. Honda, in comments submitted after the close of the comment period, concurred and offered similar information in more detail.[13]

Agency response:

We agree with the Alliance/AIAM comment that specifying how electrical isolation in ohms/volt is computed is necessary to provide clarity and avoid confusion. The term "nominal operating voltage" is not defined in SAE J1766 itself, although SAE J1715 (2000)—Electrical Vehicle Technology, which is referenced by SAE J1766, defines "nominal operating voltage" as "[t]he voltage of a battery, as specified by the manufacturer, discharging at a specified rate and temperature." However, this definition of nominal operating voltage only applies during normal operation. For purposes of FMVSS No. 305, in contrast, the electrical isolation and low voltage specifications are tested after a crash test when the vehicle need not be in normal operation and some of the contactors may have opened creating an open circuit condition. The agency thus believes that the term "nominal operating voltage" is not appropriate for this specification. Instead, the agency is using the term "working voltage" which is currently used in the proposal for the 01 series of amendments to ECE R.100.[14] For purposes of FMVSS No. 305, working voltage for a voltage source in a circuit means "the highest root mean square voltage of the voltage source, specified by the manufacturer, which may occur across its terminals or between its terminals and any conductive parts in open circuit conditions or under normal operating conditions." As defined, "working voltage" applies during normal operation of the vehicle as well as in open circuit conditions and encompasses the possible range of conditions of a voltage source after a vehicle crash. Therefore, the agency believes that "working voltage" is more relevant for use in FMVSS No. 305, and will help to avoid the potential for confusion identified by the commenters.

For consistency throughout the standard, the agency will use "working voltage" to identify a vehicle as subject to FMVSS No. 305, to identify a source as "high voltage," and to calculate electrical isolation in ohms/volt. Thus, the agency has added the following sentence in S7.6.6 and S7.6.7: "Divide Ri (in ohms) by the working voltage of the high voltage source (in volts) to obtain the electrical isolation (in ohms/volt)." The agency has also modified S3 to specify that working voltage shall be used for determining whether FMVSS No. 305's requirements are applicable to a given vehicle, and has modified the definition for "high voltage source" in S4 based on the same reasoning.

As for the use of megohmmeters for electrical isolation testing, NHTSA is still researching the use of megohmmeters for testing electrical isolation for purposes of FMVSS No. 305. Since the agency has reached no conclusions yet in that research, and since the use of megohmmeters was not raised in the NPRM and is thus outside the scope of this rulemaking, we are not providing additional test procedures for electrical safety using megohmmeters in this final rule. As the agency has noted in other rulemakings, manufacturers are not prohibited from using test procedures and devices other than those in the FMVSSs as a basis for their compliance certifications.

C. Comments Regarding Test Procedures

In the NPRM, the agency tentatively accepted the premise that low voltage could be another way besides electrical isolation to provide electrical safety, but did not specifically include it in the proposed "electrical safety" requirement and did not develop a test procedure for it. The Alliance/AIAM comments requested additional test procedure paragraphs (suggesting a new S7.7 and S7.8) for evaluating low voltage and low energy alternatives for providing electrical safety. The commenters suggested that the agency adopt the exact language used in SAE J1766.

The NPRM also stated that the agency was not addressing the issue of crash testing FCVs in this rulemaking because of practical difficulties: Test procedures for safely crashing FCVs fueled with hydrogen have not been established; but without hydrogen, fuel cells will not generate any electrical energy from which to measure electrical output. The Alliance/AIAM comments suggested that the agency could take the same approach that the Japanese government does in its regulations, which call for the fuel cell to be filled with helium and then for using a megohmmeter to measure isolation. Honda, in its late comments, concurred with the Alliance/AIAM position.

Agency response:

We agree with the Alliance/AIAM that a test procedure paragraph should be added for the low voltage option for providing electrical safety, and have

[12] A megohmmeter, roughly speaking, is an instrument used for measuring electrical resistance which consists of two main elements: (1) A DC generator, which supplies the necessary voltage for taking the measurement, and (2) the instrument portion itself, which indicates the value of the resistance being measured.

[13] NHTSA–2007–28517–0006.

[14] ECE/TRANS/WP.29/GRSP/2009/16, 23 September 2009. *Available at http://www.unece.org/trans/doc/2009/wp29grsp/ECE-TRANS-WP29-GRSP-2009-16e.pdf* (last accessed Oct. 31, 2009).

revised the regulatory text accordingly. Since we remain unconvinced of the need for a low-energy option, as discussed above, we are not adding a test procedure for that option.

Regarding the use of helium-filled fuel cells and megohmmeters for crash testing FCVs, we reiterate our position in the NPRM that the agency is still researching potential crash test methods for FCVs, and will not address this issue as part of this rulemaking.

D. Regulatory Text Wording

The Alliance/AIAM comments contained a number of requests for greater specificity in and corrections to the regulatory text for the updated FMVSS No. 305.

First, the Alliance/AIAM requested that the agency add the word "electric" in multiple places in the regulatory text, so that it would be clear for hybrid vehicles that the agency intended to focus the FMVSS No. 305 requirements only on "electric" energy storage devices and not mechanical storage devices, like hydraulic accumulators. To that end, the commenters requested that a definition be added for "electric energy storage device," and that S5.2, S7.1 and S7.6.1 all have the word "electric" added.

Agency response:

We agree that the regulatory text should clarify that the agency means to apply the requirements of FMVSS No. 305 to electric energy storage devices only, and that a definition should be added for electric energy storage devices. We have revised the regulatory text accordingly.

Second, the NPRM included a definition for "energy storage system," but the Alliance/AIAM argued that FCVs are "energy conversion systems" and not "energy storage systems," so the definition should be revised to accommodate both FCVs and battery-powered electric vehicles.

Agency response:

We agree with the Alliance/AIAM comment, and have revised the regulatory text accordingly.

Third, the NPRM defined a "high voltage source" as "any item that produces voltage levels equal to or greater than 30 VAC or 60 VDC." The Alliance/AIAM stated that since S3, the application paragraph, states that FMVSS No. 305 applies to vehicles that use "more than" 60 VDC or 30 VAC, the words "equal to or" should be removed from the definition of high voltage source.

Agency response:

We agree with the Alliance/AIAM comment, and have revised the regulatory text accordingly.

Fourth, the Alliance/AIAM requested that the agency add a definition for "propulsion system," a term used in S7.6.1 of FMVSS No. 305, but not defined. The Alliance/AIAM suggested that the definition read as follows:

> *Propulsion system* means the components or electric circuit to propel the vehicle using the energy that is supplied by a high voltage source. These include, but are not limited to, the propulsion motor, electric converter, associated wire harnesses and connectors.

Agency response:

We agree that this would be a useful definition, and have added it to the regulatory text.

And fifth, the Alliance/AIAM suggested the following editorial corrections: Figure 1 should refer to S7.6.3, not S7.6.6; in Figure 4, V1 should be V1′, and the denominator should be V1′; and in Figure 5, the denominator should be V2′.

Agency response:

We agree with these corrections and have revised the regulatory text accordingly.

E. Physical Barriers as an Additional Option for Providing Electrical Safety

The Alliance/AIAM also requested another compliance option that was not included in SAE J1766, but is included in the Japanese regulation for electrical vehicle safety. The commenters stated that "This new option would allow for isolation from high voltage sources via physical barriers that are in place to insure that there is no direct or indirect contact with live voltage sources after a vehicle crash." This would be safe, the commenters argued, because "if a person cannot access the potentially high voltage sources, then there is little chance of the occupants or rescue personnel helping the occupants from being injured from such sources." The Alliance/AIAM stated that this alternative compliance option was necessary because some FCVs may "use capacitors that take some time to discharge," and allowing it would provide "greater flexibility in order to allow introduction of advanced powertrain technologies." However, the Alliance/AIAM recognized that the agency might not be able to include this option in the final rule for procedural reasons, and requested that if this were so, the agency "publish a separate NPRM to address the option of using a physical barrier to provide electrical safety."

The Alliance further elaborated on this compliance option in their June 2009 supplemental comments. They stated that the DC components of the fuel cell can connect with the AC components through the inverter, even when the vehicle is stationary, after certain crash tests that may not result in the opening of the contactors. In such a condition, when the contactors are closed and the DC and AC components are connected, the isolation resistance at the AC component is in parallel with the isolation resistance of the DC component fuel cell. Therefore, even if the electrical isolation provided for the AC component is significantly greater than the required 500 ohms/volt, the effective isolation resistance measured at the AC component can be, at most, as high as that provided for the DC component fuel cell, which is in turn limited by the fuel cell coolant. Therefore, it may not be practical to achieve the required 500 ohms/volt electrical isolation for the AC component. The Alliance thus argued that there is a need to include finger-proof barriers [15] in FMVSS No. 305 as a fourth alternative.

The Alliance also stated in their supplemental comments that the finger-proof barrier is similar to an option that already exists in FMVSS No. 305 for battery packs, where the electrical isolation measurement is made from the traction side of the automatic disconnect that is enclosed and is physically contained within the battery pack system. They argued that the protective barrier option would be further strengthened by requiring that the barrier remain finger-proof after the crash. The commenter also stated that for electric vehicles that provide galvanic bonding for conductive materials that are not designed to conduct electrical current for vehicle operation,[16] such as the vehicle chassis electrical conducting structure (a design requirement by SAE J2578—Recommended Practice for General Fuel Cell Vehicle Safety), the only current potentially remaining in the FCV after a crash is in the high voltage components themselves. As long as those components are guarded by finger-proof barriers, the commenter argued that there would be no risk of electric shock to the first responder or the vehicle occupant after a crash.

Agency response:

The use of physical barriers as another option for providing electrical safety is beyond the scope of this rulemaking, as the Alliance/AIAM comments acknowledged. The agency is not familiar with the proposed

[15] Barriers that prevent a finger-sized probe from penetrating into an enclosed space.

[16] "Galvanic bonding" refers to a direct electrical connection, in this case for conductive materials not designed specifically to conduct electrical current for vehicle operation, as opposed to a capacitive or inductive connection.

methodology and would have to examine the issue further to judge its suitability for inclusion in FMVSS No. 305. While the Alliance supplemental comments stress the efficacy of the protective barrier option for electric shock protection due to *direct* contact with high voltage sources, there are many possible failure modes in which vehicle occupants and rescue workers are at risk of electric shock due to *indirect* contact. Additionally, the design guidelines in SAE J2578 on which the Alliance comments rely to provide protection against electric shock due to indirect contact require that all conductive materials in the vehicle be galvanically bonded if they are not designed to conduct electrical current for vehicle operation. However, the commenters suggested no test procedure to confirm that a vehicle has been designed to meet this design requirement specified in SAE J2578. The agency is thus uncertain whether indirect contact failure modes would be sufficiently accounted for by this design requirement.

For these reasons, we are not including a finger-proof protective barrier option in FMVSS No. 305 as requested by the Alliance and other manufacturers in their comments to the NPRM. However, the agency has initiated a research program to get a better understanding of the issues related to requiring this as an option to satisfy electrical safety.

F. Effective Date

In the NPRM, NHTSA proposed that the amendments made by this rulemaking would apply to vehicles manufactured on or after one year from the date of publication of the final rule, with optional early compliance. The agency believed that one year should be sufficient for manufacturers to verify that they can meet the new electrical isolation requirements, particularly since similar requirements already exist as a SAE recommended practice and currently, all manufacturers of electric-powered vehicles already isolate the high voltage sources from the vehicle chassis.

NHTSA did not receive any comments related to the proposed effective date during the comment period. However, in comments provided by Toyota (June 24, 2009), the manufacturer requested that the effective date be set three years from the date the final rule is published. Thus, it said, if the final rule were issued by September 1, 2009, compliance should not be required before September 2012. They argued that the additional time was needed so that they could incorporate the necessary changes across their current and near future HEVs to comply with the new electric safety requirements.

Agency response:

The agency evaluated the information provided by Toyota and is not convinced that leadtime of three full model years from the publication of the final rule is needed in order for their current and near future HEVs to comply with the amended requirements in FMVSS No. 305. We continue to believe that Toyota's HEVs in the current fleet already comply with the amended requirements, given that similar performance criteria were added to SAE J1766 in April 2005 at the request of the Alliance. Plans for their near future HEVs presumably include means of complying with those criteria.

Moreover, in their comments, Toyota stated expressly that their current HEVs include battery disconnection and inverter shut-down in the event of a crash. NHTSA believes that these features should allow these vehicles to comply with the electrical safety requirements using a combination of the low voltage option and the electrical isolation option for all high voltage components. NHTSA does not anticipate that near future HEV (or other electric vehicle) designs will be so different from current ones that they will be unable to comply with either the low voltage option or the electrical isolation option, or some combination thereof. Therefore, we have decided that one year lead time is sufficient to comply with the amended requirements in FMVSS No. 305. Accordingly, this final rule will become effective on September 1 in the year after the final rule is issued.

G. Hyundai Request for Interpretation on S5.2 Battery Retention

On March 9, 2009, Hyundai requested an interpretation of language in S5.2, "Battery retention." Hyundai argued that as currently written, the language of S5.2 allows a battery module located outside the passenger compartment to become dislodged as long as it does not enter the occupant compartment, while a module that is located within the occupant compartment must simply remain in the location in which they are installed. Hyundai stated that this may not properly address the intent of the standard in some circumstances. Hyundai referred to the preamble of the final rule, which stated that the intended purpose of not allowing battery modules located outside the occupant compartment was "to ensure that battery modules would not become unattached and become flying projectiles in a crash or subsequent rollover." [17] Hyundai also argued that FMVSS No. 305 does not provide a definition of the passenger compartment, but that a previous interpretation to Mazda implied that the passenger compartment was an area that shares "occupant air space" that included the area where people ride. Hyundai stated that a portion of a properly restrained battery module located outside the occupant compartment, may move into the occupant compartment during a test due to deformation of the vehicle structure without rupturing the mounting points and without becoming a "flying projectile." They further argued that in a vehicle such as a sport utility vehicle (SUV) or station wagon, where a battery module is located inside the occupant compartment and moves during impact due to the deformation of the floor, but remains firmly attached to its mounting, would technically fail the test.

Hyundai suggested that the proper interpretation of the language should not treat these two conditions separately. They argued that in the case where a battery module remains attached to the location in which it is installed but due to deformation of the vehicle structure, it moves or causes a portion of the module to enter the occupant compartment, NHTSA should not consider these to constitute a failure of the standard.

Agency response:

We have decided to respond to Hyundai's request for interpretation of S5.2 in this final rule because the NPRM had already proposed to modify the language in S5.2. The agency agrees that battery modules located inside the occupant compartment technically may move a small amount from the location from which they are installed during the impact tests. The agency also agrees that battery modules located outside the occupant compartment that partially move into the occupant compartment because of structural deformation of the vehicle structure do not impose a projectile hazard provided that they remain attached to the mounting structure. Therefore, the agency concurs that battery modules located outside the occupant compartment should be treated in the same manner as those located inside the occupant compartment, provided that they remain attached to their anchorages. Technical changes to the proposed text in S5.2 have been made accordingly.

[17] 65 FR 57985 (Sept. 27, 2000).

H. Preemption

In the view of AAJ, NHTSA's discussion in the FMVSS No. 305 NPRM of the 2000 Supreme Court case, *Geier* v. *American Honda Motor Co.,* 529 U.S. 861, and the agency's assessment of the possibility of preemption represented a "sudden decision to claim [implied] preemption" of State tort law.

Agency response:

As an initial matter, we wish to emphasize our strong belief that State law can play an important role in safeguarding public safety. In the words of the President's May 20, 2009 memorandum on preemption:

> * * * State law and national law often operate concurrently to provide independent safeguards for the public. Throughout our history, State and local governments have frequently protected health, safety, and the environment more aggressively than has the national Government.

Consistent with that memorandum, we have examined past rulemaking notices to determine if they contained statements finding implied preemption of State law. The highlights of that examination are set forth below.

We believe that a fundamental misunderstanding lies at the heart of AAJ's characterization of that discussion and assessment in the Standard No. 305 NPRM and of similar discussions and assessments in approximately two dozen other vehicle safety standard rulemaking notices issued from February 2007 to November 2008. This agency did not express or even suggest any intent to preempt State tort law impliedly in those rulemaking notices. Instead, this agency responded to the requirements of Executive Order 13132 (Federalism) in part by examining whether there might be any possible basis for a judicial finding of implied preemption of state tort law. In each of those notices, the agency concluded its examination without identifying any potential obstacle or conflict that might give rise to such a finding and without even suggesting that there was any probability that one might exist in the future. As the agency has increasingly emphasized in other vehicle safety standard rulemaking notices, it is fundamental that without any obstacle or conflict, there cannot be any implied preemption.

Those approximately two dozen 2007–2008 notices contrast markedly with three vehicle safety standard rulemaking notices issued in mid-2005. In those three notices, this agency did state that it discerned a potential obstacle or conflict that might be posed by state tort law and stated further that if a court found that an obstacle or conflict existed, it could result in the court's finding that such state tort law was impliedly preempted. Further, in each of those three rulemakings, the agency was unmistakably explicit in identifying the potential existence and nature of the obstacle or conflict.

Those three notices were the June 2005 NPRM on designated seating positions;[18] the August 2005 NPRM on roof crush;[19] and the September 2005 NPRM on rearview mirrors.[20] In each of those NPRMs, the agency identified types of state requirements that it had discerned and said might create a conflict and therefore might be found to be impliedly preempted as a result of the rulemaking.

We note that none of the statements about preemption in those three rulemakings is still operative. *The final disposition of each of those statements is as follows—*

- *Rearview mirrors*—The tentative statement about preemption in the proposal was never finally adopted. It became moot when the agency withdrew this rulemaking in July 2008 without ever issuing a final rule.[21]
- *Roof crush*—In the final rule on roof crush published on May 12, 2009, the agency said that it no longer perceived any potential conflicts or obstacles, and accordingly stated there was no likelihood of a court's finding there to be any implied preemption of State tort law;[22] and
- *Designated seating position*—In response to petitions for reconsideration of the agency's inclusion in procedures for determining the number of "designated seating positions" in a motor vehicle of a statement declaring the preemptive effect of those procedures, the agency recently issued a final rule deleting that statement from the regulatory text and said, as it did in the roof crush final rule, that it no longer perceived any obstacles or conflict, and accordingly there was no likelihood of a court's finding there to be any implied preemption of State tort law.[23]

The 2007–2008 notices, including the FMVSS No. 305 NPRM, are completely different from those three 2005 rulemakings. Although AAJ characterized the preemption assessment in the FMVSS No. 305 NPRM, as it has similar preemption assessments in the other 2007–2008 vehicle safety notices, as an assertion of implied preemption of State tort law, a careful reading of the agency's discussions under Executive Order 13132 does not support that characterization. The pertinent paragraph in the FMVSS No. 305 NPRM reads as follows:

> In addition to the express preemption noted above, the Supreme Court has also recognized that State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes their State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). NHTSA has not outlined such potential State requirements in today's rulemaking, however, in part because such conflicts can arise in varied contexts, but it is conceivable that such a conflict may become clear through subsequent experience with today's standard and test regime. NHTSA may opine on such conflicts in the future, if warranted. *See id.* at 883–86.[24]

This discussion does not contain any statement that that particular rulemaking was intended to or had the effect of impliedly preempting State law. Further, neither the discussion in the FMVSS No. 305 NPRM nor any of the other similar discussions in the other vehicle safety rulemaking notices was viewed by the agency at the time of issuance as an assertion of implied preemption with respect to the safety standard under discussion, and none of them is so viewed now. The agency did not at the time of issuing any of those notices suggest the existence of any obstacle or other conflict that might give rise to a judicial finding of implied preemption, and does not now discern, or anticipate the possibility of, any obstacle or conflict.

Far from indicating in the FMVSS No. 305 NPRM that it had found an obstacle or conflict, the agency stated that it had "not outlined" any obstacles or conflicts. The agency went further, indicating to the contrary that there were no clear obstacles or conflicts. These judgments were based in part upon the agency's consideration of the nature (*e.g.,* the language and structure of the regulatory text) and objectives of each of the rules. Since without obstacle or conflict, there could not be any implied preemption of State tort law, the agency did not anticipate that those discussions would somehow be characterized as assertions of implied preemption of State tort law.

Nevertheless, since misunderstandings occurred and continued to occur, the agency initiated

[18] 70 FR 36094, 36098 (June 22, 2005).

[19] 70 FR 49223, 49245–6 (August 23, 2005).

[20] 70 FR 53753, 53768–9 (September 12, 2005).

[21] 73 FR 42309 (July 21, 2008).

[22] 74 FR 22348, 22380–83 (May 12, 2009).

[23] 74 FR 68185 (December 23, 2009).

[24] 72 FR 57260, 57265 (October 9, 2007).

in late summer of 2008 a progressive and continuing series of evolutionary efforts to clarify the language of similar agency discussions in subsequent vehicle safety notices.

It did so first by removing and replacing the statement that the agency "has not outlined" any obstacles or conflicts. Recognizing that some persons might be concerned that such a statement leaves open the theoretical possibility that obstacles or conflicts might have been discerned, but not outlined, the agency sought to ensure that that possibility was clearly negated. Beginning with a September 2008 proposal on seat belt lockability, the agency switched to affirmatively stating that the agency "has not discerned" any obstacles or conflicts:

> NHTSA has not discerned any conflict in today's rulemaking. However, in part because such conflicts can arise in varied contexts, the agency cannot rule out the possibility that such a conflict may become clear through subsequent experience with the proposed standard and test regime. NHTSA may opine on such conflicts in the future, if warranted.[25]

As this clarification did not bring an end to the petitions from AAJ, the agency made further clarifying changes in an early March 2009 interim final rule on air brake systems:

> NHTSA has considered today's interim final rule and does not currently foresee any potential State requirements that might conflict with it.[26]

For further emphasis, the agency added an additional sentence to its discussion under E.O. 13132 to emphasize the fundamental significance of not discerning any conflicts or obstacles:

> Without any conflict, there could not be any implied preemption.[27]

In August 2009, the agency began including a brief description of what the agency typically considers in assessing whether there might be any conflict or obstacle. The essential point in the notice remained that the agency had not identified any conflict or obstacle:

> Second, the Supreme Court has recognized the possibility of implied preemption: In some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). However, NHTSA has considered *the nature and purpose* of today's rule and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption. (Emphasis added.)[28]

This discussion, and the one below in Section III.C assessing this final rule under Executive Order 13132, represent the latest in the continuing series of clarifications to assuage concerns, ensure an end to the misunderstandings, and promote consistency with the President's May 20, 2009 memorandum on preemption.[29] The pertinent portion of the Section III.C discussion reads as follows:

> Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000), finding implied preemption of State tort law on the basis of a conflict discerned by the court, not on the basis of an intent to preempt asserted by the agency itself.
>
> NHTSA has considered the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's final rule and does not discern any existing State requirements that conflict with the rule or the potential for any future State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of State law, including state tort law.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). This final rule will have no significant effect on the national economy as it simply provides alternative means for achieving compliance and aligns FMVSS No. 305 with current industry recommended practices to facilitate the development and introduction of fuel cell vehicles and next generation electric powered vehicles into the market.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. Any small manufacturers that might be affected by this final rule are already subject to the requirements of FMVSS No. 305. Further, the agency believes the testing associated with the requirements added by this final rule are not substantial and to some extent are already being voluntarily borne by the manufacturers pursuant to SAE J1766. Therefore, there will be only a minor economic impact.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

[25] 73 FR 52939, 52941 (September 12, 2008).

[26] 74 FR 9173, 9175 (March 3, 2009).

[27] *Id.* The full discussion reads as follows:* * * the Supreme Court has recognized the possibility of implied preemption: State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of a NHTSA safety standard. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000). NHTSA has considered today's interim final rule and does not currently foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption.

[28] 74 FR 40760, 40763–4 (August 13, 2009).

[29] The President's memorandum recognizes that State law and national law often operate concurrently to provide independent safeguards for the public and states that the general policy of his Administration is that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. *See http://www.whitehouse.gov/the_press_office/presidential-memorandum-regarding-preemption/* (last accessed February 4, 2010).

49 U.S.C. 30103(b)(1). It is this statutory command that preempts any non-identical State legislative and administrative law [30] addressing the same aspect of performance, not today's rulemaking, so consultation would be inappropriate.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier,* v. *American Honda Motor Co.,* 529 U.S. 861 (2000), finding implied preemption of State tort law on the basis of a conflict discerned by the court,[31] not on the basis of an intent to preempt asserted by the agency itself.[32]

NHTSA has considered the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's final rule and does not discern any existing State requirements that conflict with the rule or the potential for any future State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including State tort law.

D. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

F. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or online at *http://www.dot.gov/privacy.html.*

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no information collection requirements associated with this final rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, as amended by Public Law 107–107 (15 U.S.C. 272), directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress (through OMB) with explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

FMVSS No. 305 has historically drawn largely from SAE J1766, and does so again for this current rulemaking, which updates FMVSS No. 305 based on the April 2005 version of SAE J1766. In accordance with SAE J1766, this final rule (a) specifies electrical safety requirements to all high voltage sources and not just the propulsion battery, (b) distinguishes between AC and DC high voltage sources and specifies electrical isolation of 500 ohms/volt for AC high voltage sources and 100 ohms/volt for DC high voltage sources with continuous isolation monitoring during vehicle operation, and (c) permits a low voltage option to comply with electrical safety requirements. NHTSA is not, however, adopting SAE J1766 verbatim into the FMVSSs and has not adopted the electrical energy option for electrical safety that is permitted in SAE J1766 because our analysis indicates that it is less stringent and poses a greater risk of electric shock hazard than the electrical isolation option. In addition, the method proposed by commenters for determining compliance with the low energy option was found not to be practical for the agency's purpose.

In the NPRM, NHTSA requested public comment on the appropriateness of also considering the 2006 International Organization for Standardization (ISO) standard ISO 23273–3, "Fuel cell road vehicles—safety specifications—Part 3: Protection of persons against electric shock." No comments were received on this issue. This ISO standard which specifies in-use requirements of fuel cell vehicles for the protection of persons and the environment inside and outside the vehicles against electric shock, is currently in the process of being superseded by another standard under development, ISO–6469–3, "Electric road vehicles—safety specifications—part 3: Protection of persons against electric hazards." Since the purpose of FMVSS No. 305 is to reduce deaths and injuries during a crash and not during vehicle operation as in the ISO standard and since the ISO standard is still in flux, the agency is not incorporating any part of this standard into this final rule.

IV. Regulatory Text

List of subjects in 49 CFR Part 571

Imports, Motor vehicles, Motor vehicle safety.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571.305 as follows:

[30] The issue of potential preemption of State tort law is addressed in the immediately following paragraph discussing implied preemption.

[31] The conflict was discerned based upon the nature (*e.g.,* the language and structure of the regulatory text) and the safety-related objectives of FMVSS requirements in question and the impact of the State requirements on those objectives.

[32] Indeed, in the rulemaking that established the rule at issue in this case, the agency did not assert preemption.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 571.305 by revising S1, S2, S3, S4, S5, S5.2, S5.3, S6.2, S7, S7.1, S7.2, S7.4, S7.6, S7.6.1, S7.6.2, S7.6.3, S7.6.4, S7.6.5, S7.6.6, S7.6.7, Figure 1, Figure 2, Figure 3, Figure 4, and Figure 5, and adding S5.4, S7.7, and S8 to read as follows:

§ 571.305 Standard No. 305; Electric-powered vehicles: Electrolyte spillage and electrical shock protection.

S1. *Scope.* This standard specifies requirements for limitation of electrolyte spillage, retention of electric energy storage devices, and protection from harmful electric shock during and after a crash.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries during and after a crash that occur because of electrolyte spillage from electric energy storage devices, intrusion of electric energy storage device components into the occupant compartment, and electrical shock.

S3. *Application.* This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks, and buses that have a GVWR of 4,536 kg or less, that use electrical components with working voltages more than 60 volts direct current (VDC) or 30 volts alternating current (VAC), and whose speed attainable over a distance of 1.6 km on a paved level surface is more than 40 km/h.

S4. *Definitions.*

Electrical isolation means the electrical resistance between the vehicle high voltage source and any vehicle conductive structure.

Electric energy storage/conversion/power generating system means the components comprising, but not limited to, the vehicle's high voltage battery system, capacitor system, or fuel cell system, and rechargeable energy storage systems. These include, but are not limited to, the battery or capacitor modules, interconnects, venting systems, battery or capacitor restraint devices, and electric energy storage boxes or containers that hold the individual battery or capacitor modules. Hydrogen system components of fuel cell vehicles, such as the hydrogen tanks and hydrogen tubes, are not included in the electric energy storage/conversion system.

Electric energy storage device means a high voltage source that can store energy, such as a battery or capacitor modules.

High voltage source means any electric component that has a working voltage greater than 30 VAC or 60 VDC.

Propulsion system means the components or electric circuit to propel the vehicle using the energy that is supplied by a high voltage source. These include, but are not limited to, the propulsion motor, electric converter, and associated wire harnesses and connectors, and coupling systems for charging rechargeable energy storage systems.

Working voltage means the highest root mean square voltage of the voltage source, which may occur across its terminals or between its terminals and any conductive parts in open circuit conditions or under normal operating conditions.

VAC means volts of alternating current (AC).

VDC means volts of direct current (DC).

S5. *General Requirements.* Each vehicle to which this standard applies, must meet the requirements in S5.1, S5.2, and S5.3 when tested according to S6 under the conditions of S7.

* * * * *

S5.2 *Electric energy storage/conversion system retention.* All components of the electric energy storage/conversion system must be anchored to the vehicle. All component anchorages, including any brackets or structures that transfer loads from the component to the vehicle structure, shall remain attached to the vehicle structure at all attachment locations during and after testing performed pursuant to the procedures of S6 of this standard.

S5.3 *Electrical safety.* After each test, each high voltage source in a vehicle must meet the electrical isolation requirements of subparagraph (a) or the voltage level requirements of subparagraph (b).

(a) The electric isolation between each high voltage source and the vehicle chassis electricity-conducting structure must meet one of the following:

(1) Electrical isolation must be greater than or equal to 500 ohms/volt for all DC high voltage sources without continuous monitoring of electrical isolation during vehicle operation and for all AC high voltage sources; or

(2) Electrical isolation must be greater than or equal to 100 ohms/volt for all DC high voltage sources with continuous monitoring of electrical isolation, in accordance with the requirements of S5.4, during vehicle operation.

(b) The voltage of the voltage source must be less than or equal to 30 VAC for AC components or 60 VDC for DC components.

S5.4 *Electrical isolation monitoring.* For each continuously monitored DC high voltage source, the continuous monitoring of electrical isolation during vehicle operation referred to in S5.3(a)(2) must be achieved through an electrical isolation monitoring system that displays a warning for loss of isolation when tested according to S8. The system must monitor its own readiness and the warning display must be clearly visible from the driver's designated seating position.

* * * * *

S6.2 *Rear moving barrier impact.* The vehicle must meet the requirements of S5.1, S5.2, and S5.3 when it is impacted from the rear by a barrier that conforms to S7.3(b) of 571.301 of this chapter and that is moving at any speed up to and including 80 km/h (50 mph) with dummies in accordance with S6.2 of 571.301 of this chapter.

* * * * *

S7. *Test conditions.* When the vehicle is tested according to S6, the requirements of S5.1 through S5.3 must be met under the conditions specified in S7.1 through S7.7. All measurements for calculating voltage(s) and electrical isolation are made after a minimum of 5 seconds after the vehicle comes to rest in tests specified in S6. Where a range is specified, the vehicle must be capable of meeting the requirements at all points within the range.

S7.1 *Electric energy storage device state of charge.* The electric energy storage device is at the state of charge specified in subparagraphs (a), (b), or (c), as appropriate:

(a) At the maximum state of charge recommended by the manufacturer, as stated in the vehicle owner's manual or on a label that is permanently affixed to the vehicle;

(b) If the manufacturer has made no recommendation in the owner's manual or on a label permanently affixed to the vehicle, at a state of charge of not less than 95 percent of the maximum capacity of the electric energy storage device; or

(c) If the electric energy storage device(s) is/are rechargeable only by an energy source on the vehicle, at any state of charge within the normal operating voltage defined by the vehicle manufacturer.

S7.2 *Vehicle conditions.* The switch or device that provides power from the high voltage system to the propulsion

motor(s) is in the activated position or the ready-to-drive position.

* * * * *

S7.4 *Rear moving barrier impact test conditions.* In addition to the conditions of S7.1 and S7.2, the conditions of S7.3(b) and S7.6 of 571.301 of this chapter apply to the conducting of the rear moving deformable barrier impact test specified in S6.2.

* * * * *

S7.6 *Electrical isolation test procedure.* In addition to the conditions of S7.1 and S7.2, the conditions in S7.6.1 through S7.6.7 apply to the measuring of electrical isolation specified in S5.3(a).

S7.6.1 Prior to any barrier impact test, the high voltage source is connected to the vehicle's propulsion system, and the vehicle ignition is in the "on" (propulsion system energized) position. Bypass any devices or systems that do not allow the propulsion system to be energized at the time of impact when the vehicle ignition is on and the vehicle is in neutral. For a vehicle that utilizes an automatic disconnect between the high voltage source and the traction system that is physically contained within the high voltage electric energy storage/conversion/power generating system, the electrical isolation measurement after the test is made from the traction-system side of the automatic disconnect to the vehicle chassis electricity-conducting structure. For a vehicle that utilizes an automatic disconnect that is not physically contained within the high voltage electric energy storage/conversion/power generating system, the electrical isolation measurement after the test is made from both the high voltage source side and from the traction-system side of the automatic disconnect to the vehicle chassis electricity-conducting structure.

S7.6.2 The voltmeter used in this test has an internal resistance of at least 10 MΩ.

S7.6.3 The voltage(s) is/are measured as shown in Figure 1 and the high voltage source voltage(s) (Vb) is/are recorded. Before any vehicle impact test, Vb is equal to or greater than the nominal operating voltage as specified by the vehicle manufacturer.

S7.6.4 The voltage(s) is/are measured as shown in Figure 2, and the voltage(s) (V1) between the negative side of the high voltage source and the vehicle chassis electricity-conducting structure is/are recorded.

S7.6.5 The voltage(s) is/are measured as shown in Figure 3, and the voltage(s) (V2) between the positive side of the high voltage source and the vehicle chassis electricity-conducting structure is/are recorded.

S7.6.6 If V1 is greater than or equal to V2, insert a known resistance (Ro) between the negative side of the high voltage source and the vehicle chassis electricity-conducting structure. With the Ro installed, measure the voltage (V1′) as shown in Figure 4 between the negative side of the high voltage source and the vehicle chassis electricity-conducting structure. Calculate the electrical isolation resistance (Ri) according to the formula shown. Divide Ri (in ohms) by the working voltage of the high voltage source (in volts) to obtain the electrical isolation (in ohms/volt).

S7.6.7 If V2 is greater than V1, insert a known resistance (Ro) between the positive side of the high voltage source and the vehicle chassis electricity-conducting structure. With the Ro installed, measure the voltage (V2′) as shown in Figure 5 between the positive side of the high voltage source and the vehicle chassis electricity-conducting structure. Calculate the electrical isolation resistance (Ri) according to the formula shown. Divide Ri (in ohms) by the working voltage of the high voltage source (in volts) to obtain the electrical isolation (in ohms/volt).

S7.7 *Voltage measurement.* For the purposes of determining low voltage source specified in S5.3(b), voltage is measured as shown in Figure 1. Voltage Vb is measured across the two terminals of the voltage source. Voltages V1 and V2 are measured between the source and the vehicle chassis electricity-conducting structure.

S8 Test procedure for on-board electrical isolation continuous monitoring system. Prior to any impact test, the requirements of S5.4 for the on-board electrical isolation continuous monitoring system shall be confirmed using the following procedure.

(1) The electric energy storage device is at the state of charge specified in S7.1.

(2) The switch or device that provides power from the high voltage system to the propulsion motor(s) is in the activated position or the ready-to-drive position.

(3) Determine the isolation resistance, Ri, of the high voltage source with the electrical isolation monitoring system using the procedure outlined in S7.6.2 through S7.6.7.

(4) Insert a resistor with resistance equal to Ro=1/(1/(95 times the working voltage of the high voltage source)—1/Ri) between the positive terminal of the high voltage source and the vehicle chassis electric conducting structure.

The electrical isolation monitoring system indicator shall display a warning to the driver.

BILLING CODE 4910–59–P

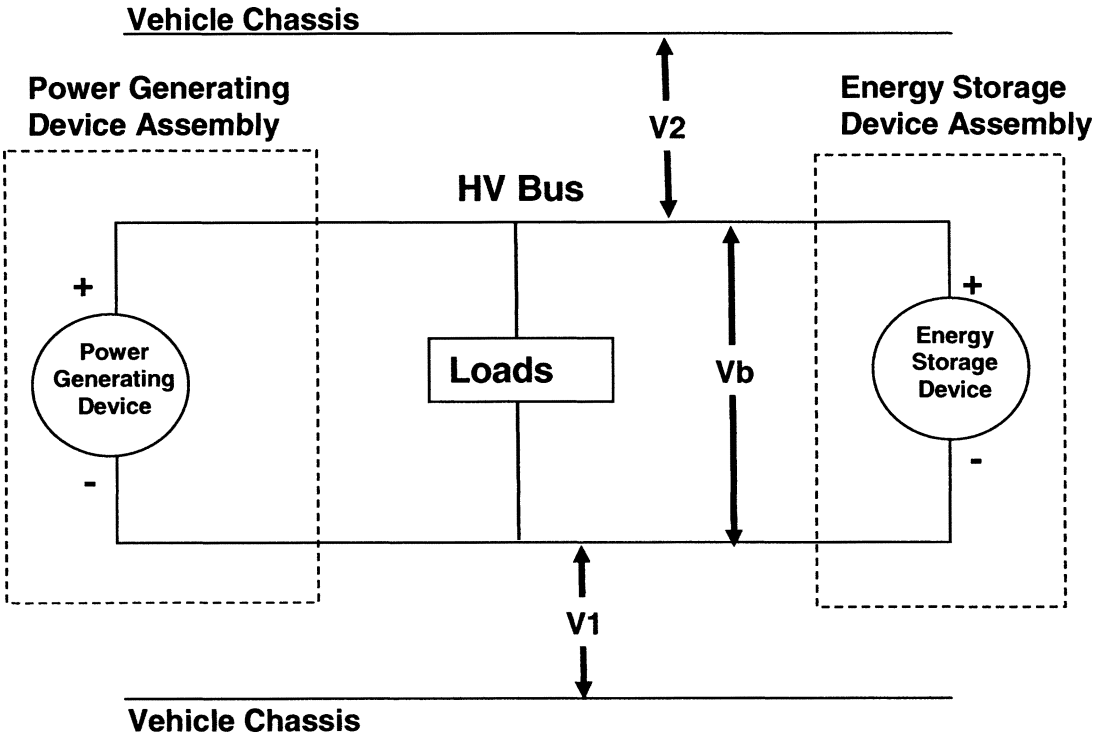


Figure 1. S7.6.3 and S7.7 Measurement of Voltage Source Voltage

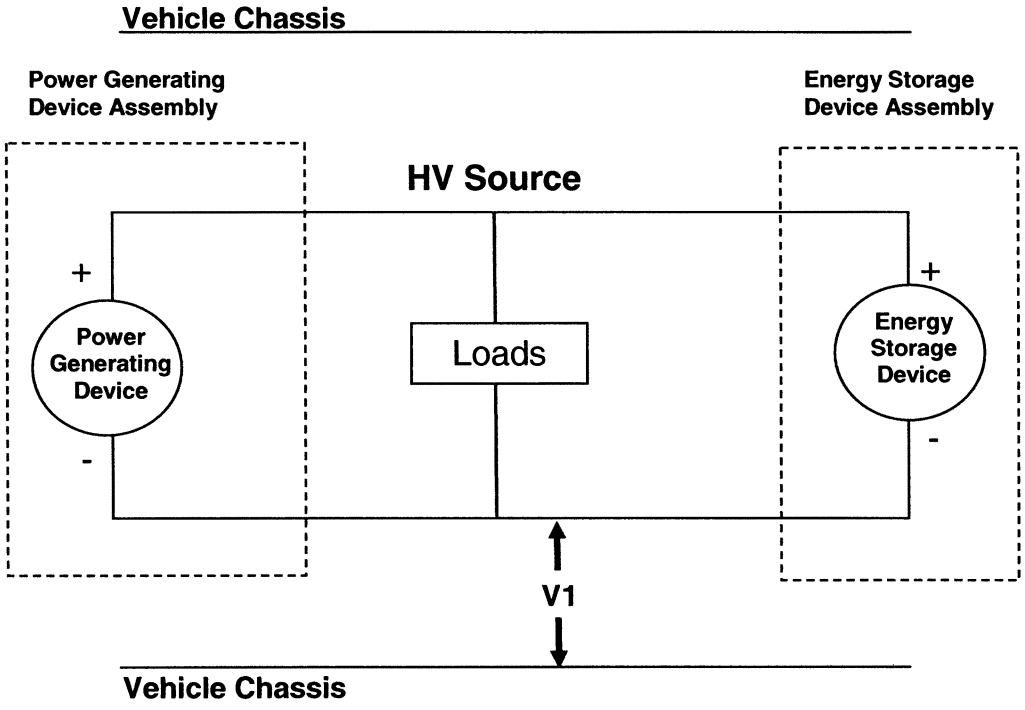


Figure 2. S7.6.4 Measurement for V1 Voltage between the Negative Side of the High Voltage Source and the Vehicle Chassis Electricity-Conducting Structure

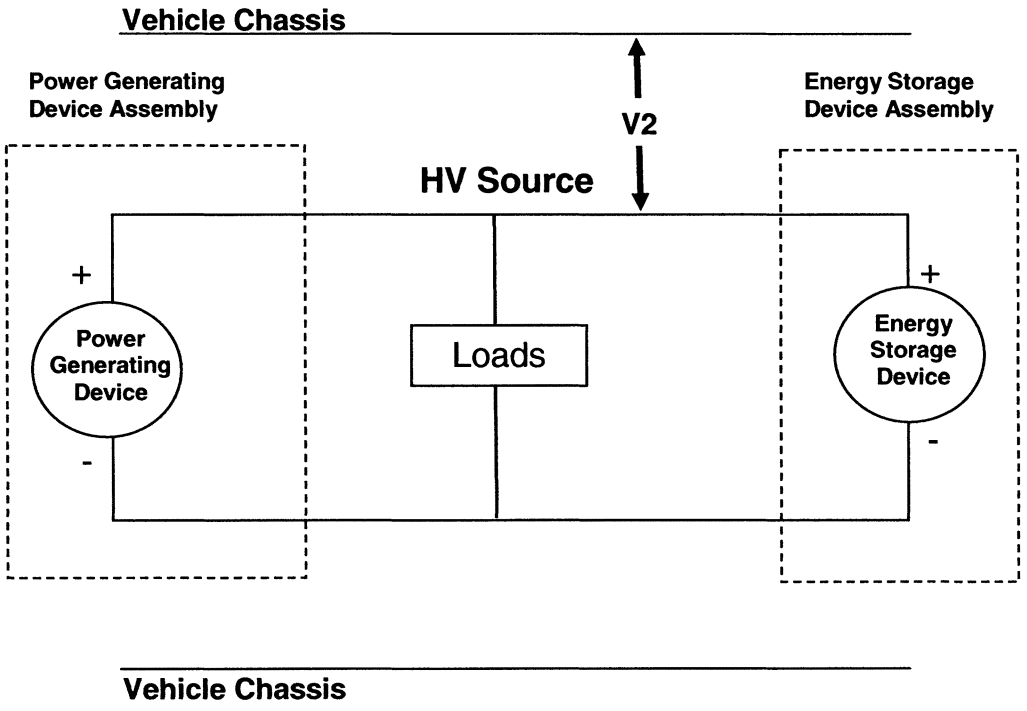
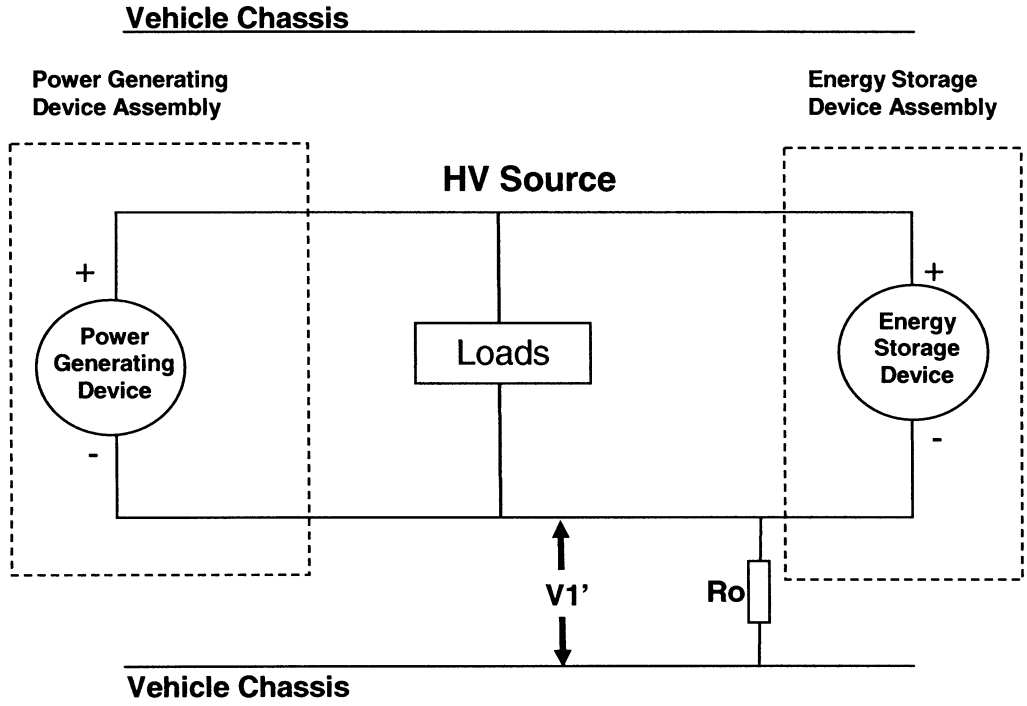


Figure 3. S7.6.5 Measurement for V2 Voltage between the Positive Side of the High Voltage Source and the Vehicle Chassis Electricity-Conducting Structure



$$Ri = Ro\ (1+V2/V1)((V1-V1')/V1')$$

Figure 4. S7.6.6 Measurement for V1' Voltage across Resistor between Negative Side of the High Voltage Source and Vehicle Chassis Electricity-Conducting Structure

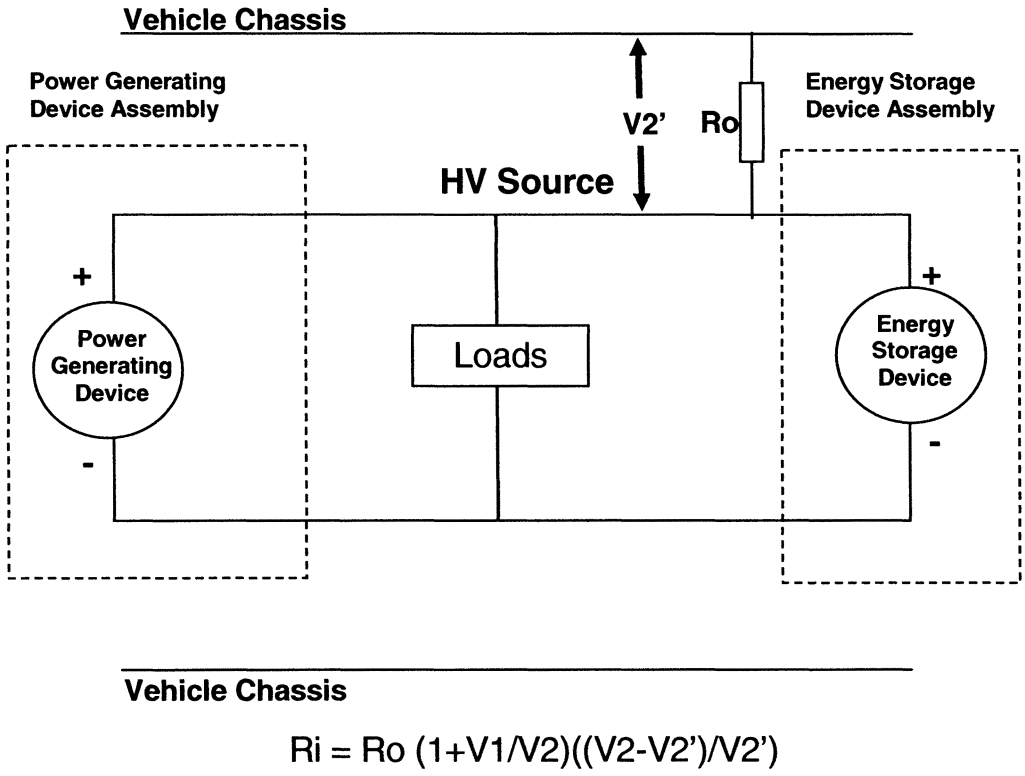


Figure 5. S7.6.7 Measurement for V2' Voltage across Resistor between Positive Side of the High Voltage Source and Vehicle Chassis Electricity-Conducting Structure

Issued: June 8, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–14131 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–XW79

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason Angling category retention limit adjustment; southern area trophy fishery closure; quota transfer.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit should be adjusted for the remainder of 2010, based on consideration of the regulatory determination criteria regarding inseason adjustments. These actions apply to vessels permitted in the Highly Migratory Species (HMS) Angling category and Charter/Headboat category (when fishing recreationally for BFT). NMFS also closes the southern area Angling category fishery for large medium and giant ("trophy") BFT, and transfers 1.7 mt from the Reserve to the northern area trophy category subquota. These actions are being taken consistent with the BFT fishery management objectives of the 2006 Consolidated HMS Fishery Management Plan and to prevent overharvest of the 2010 Angling category quota.

DATES: Effective June 12, 2010 through December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006).

The 2010 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2010. The Angling category season opened January 1, 2010, and continues through December 31, 2010. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT (measuring 27 to less than 73 inches (68.5 to less than 185 cm)) applies (§ 635.23(b)(2)). An annual limit of one large medium or giant BFT (73 inches or greater) per vessel also applies (§ 635.23(b)(1)). These retention limits apply to HMS Angling and HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

The 2008 ICCAT recommendation regarding Western BFT management resulted in a U.S. quota of 1,034.9 mt for 2009, and 977.4 mt for 2010. Consistent with the allocation scheme established

in the Consolidated HMS FMP, the baseline Angling category share was 199 mt for 2009, and is 187.6 mt for 2010. In order to implement the ICCAT recommendation for the 2010 fishing year, NMFS has recently published final quota specifications to set BFT quotas for each of the established domestic fishing categories (75 FR 30732, June 2, 2010). The final 2010 Angling category quota is 225.4 mt (97.7 mt for school BFT, 122.5 mt for large school/small medium BFT, and 5.2 mt for large medium/giant BFT).

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria cited above and their applicability to the Angling category BFT retention limit for the 2010 Angling category fishery. NMFS examined the results of the 2007 through 2009 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery toward heavier fish, particularly in the large school and small medium size classes. Data and dockside observations from 2007 through 2009 indicate a shift in catch to the large school/small medium size class (47 to less than 73 inches (119 to less than 185 cm)), particularly to large school BFT (47 to less than 59 inches (119 to less than 150 cm)) in 2008 and to small medium BFT (59 to less than 73 inches) in 2009. Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). NMFS has found that as this cohort of fish ages and grows in weight but remains under 73 inches (i.e., the upper range of the large school/small medium size class), the large school/small medium subquota has been attained with fewer fish landed.

NMFS has also considered recreational landings data from the North Carolina Tagging Program, which indicate that a quarter of the available large school/small medium quota (30.5 mt out of 122.5 mt) and nearly the entire coastwide trophy quota (5.1 out of 5.2 mt) was taken as of April 30, 2010.

In order to constrain landings to the Consolidated HMS FMP-based Angling category allocations, NMFS needs to implement more restrictive daily retention limits in 2010 than in recent years. This is particularly important given the ICCAT-recommended 2-year balancing period for limiting the harvest of school-BFT and given that complete information regarding coastwide recreational BFT landings is not available until the end of the calendar year. It is also important that NMFS constrain landings to BFT subquotas not only to remain within the current FMP quota allocations but also to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding.

Based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, it is reasonable to assume that the large school/small medium subquota (and potentially the Angling category quota) would be exceeded under the default daily retention limit, particularly due to the high availability of small medium BFT. NMFS has determined that the Angling category retention limit should be adjusted to prohibit the retention of small medium BFT, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, needs, and recent landings results of the two sectors. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, recent Large Pelagics Survey estimates indicate that charter/headboat BFT landings constitute approximately 25 percent of recent recreational landings, with the remaining 75 percent landed by private vessels. Therefore, for private vessels (i.e., those with HMS Angling category permits) the limit is one school or large school BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 59 inches). For charter vessels, i.e., those with HMS Charter/Headboat permits, the limit is one school BFT and one large school BFT per vessel per day/trip while fishing recreationally for BFT (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 59 inches). These retention limits will be effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. NMFS may adjust the daily retention limit further with an inseason action if warranted.

As discussed above, the determination to adjust the daily retention limit is primarily based on the catches of large school/small medium BFT in 2007 and the likelihood of closure of that segment of the fishery if no adjustment is made § 635.27(a)(8)(ii), and the anticipated availability of large school/small medium BFT on the fishing grounds § 635.27(a)(8)(ix). NMFS anticipates that reduction of the BFT daily retention limit will result in landings during 2010 that would not exceed the available subquota (122.5 mt) as set in the 2010 quota specifications.

Large Medium and Giant "Trophy" Category Fishery; Closure and Quota Transfer

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve to any category quota in the fishery, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering determination criteria provided under § 635.27(a)(8).

The 2010 annual BFT quota specifications provide for an adjusted quota of 5.2 mt of large medium and giant (trophy) BFT (measuring greater than 73 inches) to be harvested from the regulatory area by vessels fishing under the Angling category quota, with 1.7 mt for the area north of 39°18′ N. lat. (off Great Egg Inlet, NJ) and 3.5 mt for the area south of 39°18′ N. lat.

Based on North Carolina Tagging Program information, NMFS has determined that the southern area trophy BFT Angling category subquota has been taken and that a closure of the southern area trophy BFT fishery is warranted at this time. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT south of 39°18′ N. lat. by persons aboard

vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) must cease at 11:30 p.m. local time on June 12, 2010. This action is taken consistent with the regulations at § 635.28(a)(1).

Following consideration of the determination criteria described above and at§ 635.27(a)(8), NMFS transfers 1.7 mt from the Reserve to the Angling category northern area trophy subquota, so that 1.7 mt (the amount established in the 2010 BFT quota specifications) is available for the retention and landing of trophy BFT in the area north of 39°18′ N. lat. This action is consistent with the inseason adjustment regulations at § 635.27(a)(9).

These Angling category actions are intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; and to be consistent with the objectives of the Consolidated HMS FMP.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all released BFT must be returned to the sea immediately with a minimum of injury and without removing the fish from the water, consistent with requirements at § 635.21(a)(1).

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access www.hmspermits.gov, for updates.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, the reduction in Angling category daily retention limit and closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2010 fishing year landings are consistent with ICCAT recommendations and the 2006 Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on www.hmspermits.gov.

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the Angling category and potentially other BFT quota categories, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery and preclude small medium BFT landings in all areas before additional landings of these size BFT accumulate. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(b)(3), 635.27(a)(9), and 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 8, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–14221 Filed 6–14–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 113
Monday, June 14, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Doc. No. AMS–DA–09–0062; AO–14–A73, et al.; DA–03–10]

Milk in the Northeast and Other Marketing Areas; Final Decision on Proposed Amendments to Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision maintains the current fluid milk product definition's compositional standard of 6.5 percent nonfat milk solids criterion and incorporates an equivalent 2.25 percent true milk protein criterion for determining if a product meets the compositional standard. The decision also determines how milk and milk-derived ingredients should be priced under all Federal milk marketing orders when used in products meeting the fluid milk product definition. The decision provides exemptions for drinkable yogurt products containing at least 20 percent yogurt (by weight), kefir, and products intended to be meal replacements from the fluid milk product definition. The orders as amended are subject to producer approval by referendum before they can be implemented.

FOR FURTHER INFORMATION CONTACT: Henry H. Schaefer, Economist, USDA/AMS/Dairy Programs, Upper Midwest Milk Market Administrators Office, Suite 200, 1600 West 82nd Street, Minneapolis, Minnesota 55431–1420, (952) 831–5292, e-mail address: *hschaefer@fmma30.com*; or William Francis, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231–Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–6274, e-mail address: *william.francis@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This final decision maintains the current fluid milk product definition's compositional standard of 6.5 percent nonfat milk solids and incorporates an equivalent 2.25 percent true milk protein criterion for determining if a product meets the compositional standard. The decision also determines how milk and milk-derived ingredients should be priced under all Federal milk marketing orders when used in products meeting the fluid milk product definition. The decision exempts drinkable yogurt products containing at least 20 percent yogurt (by weight), kefir, infant formulas, dietary products (meal replacements) and other products that may contain milk-derived ingredients from the fluid milk product definition.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866. The proposed amendments to the rules herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 604–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is a habitant, or has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 2005, the month the hearing was held, 52,425 dairy farmers were pooled on the Federal order system. Of the total, 49,160, or 94 percent were considered small businesses. During the same month, 1,530 plants were regulated by or reported their milk receipts to their respective Market Administrator. Of the total, 847, or 55 percent were considered small businesses.

The fluid milk product definition sets out the criteria for determining if the use of producer milk and milk-derived ingredients in such products should be priced at the Class I price. The established criteria for the classification of producer milk are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing fluid milk products thus assuring that similarly situated handlers have the same minimum price as required by Section 608(c)5 of the Act. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities. The impact of the proposed amendments on large and small entities would be negligible. In fact, the amendment proposing to change the

classification of kefir and drinkable yogurt is estimated to affect blend prices by no more than $ 0.0026 per cwt based on record evidence.

The Agricultural Marketing Service is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements are necessary.

This notice does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. The forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued April 6, 2005; published April 12, 2005 (70 FR 19012).

Recommended Decision: Issued May 12, 2006; published May 17, 2006 (71 FR 28590).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this final decision with respect to the proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Northeast and other marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in all Federal milk marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Pittsburgh, Pennsylvania, on June 20–23, 2005, pursuant to a notice of hearing issued April 6, 2005 and published April 12, 2005 (70 FR 19012); and a recommended decision issued May 12, 2006 and published May 17, 2006 (71 FR 28590).

The material issues on the record of the hearing relate to:

1. Amending the fluid milk product definition.

Findings and Conclusions

This final decision maintains the current fluid milk product definition's compositional standard of 6.5 percent nonfat milk solids and incorporates an equivalent 2.25 percent true milk protein criterion for determining whether a product meets the compositional standard. The decision also determines how milk and milk-derived ingredients should be priced under all orders when used in products meeting the fluid milk product definition. The decision exempts drinkable yogurt products containing at least 20 percent yogurt (by weight), kefir, infant formulas, dietary products (meal replacements) and other products that may contain milk-derived ingredients from the fluid milk product definition.

All Federal milk orders currently state that "fluid milk product means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages." The fluid milk product definition also contains a non-definitive list of dairy products that are named fluid milk products. In addition to the compositional butterfat standard fluid milk products shall not include, among other products, "* * * any product that contains by weight less than 6.5 percent nonfat milk solids * * *" Dairy products that do not fall within these limits are not considered fluid milk products and the milk used to produce these products is classified in Class II, Class III or Class IV, depending on the form or purpose for which the products are to be used.

Eleven proposals were published in the hearing notice for this proceeding. Proposals 1, 3, 4 and 6 were abandoned at the hearing by their proponents in support of other noticed proposals. No further reference to these proposals will be made.

A proposal published in the hearing notice as Proposal 2, offered by Dairy Farmers of America, Inc. (DFA), seeks to amend the fluid milk product definition to include any dairy ingredient, including whey, when calculating the milk contained in a product on a protein-equivalent or nonfat solids equivalent basis. DFA is a dairy farmer-member owned cooperative and at the time of the hearing had 12,800 member farms located in 49 states whose members' milk is pooled throughout the Federal order system.

H.P. Hood LLC (H.P. Hood) owns and operates milk processing and manufacturing plants in the Eastern and Midwest United States and is the proponent of a proposal published in the hearing notice as Proposal 5 that was modified at the hearing. As modified, Proposal 5 seeks to amend the fluid milk product definition to include any product that, based upon substantial evidence as determined by the Department, directly competes with other fluid milk products and that the Department must make a written determination before any product can be classified as a fluid milk product.

A proposal published in the hearing notice as Proposal 7 was offered by the National Milk Producers Federation (NMPF). At the time of the hearing NMPF consisted of 33 dairy-farmer member cooperatives that represented more than 75 percent of U.S. dairy farmers. Proposal 7 seeks to amend the fluid milk product definition by removing the reference "6.5 percent nonfat solids standard and whey," and adopting a 2.25 percent true milk protein criterion. During the hearing, DFA offered a modification to Proposal 7 by seeking to authorize the Department to make an interim classification determination for new products that result from new technology. The Department would then convene a hearing to address the use of the new technology in classification decisions and make a final classification determination for the new product within one year.

Proposal 8 seeks to amend the fluid milk product definition by excluding yogurt-containing beverages from the fluid milk product definition. This proposal was offered by The Dannon Company, Inc. (Dannon), a wholly owned subsidiary of The Danone Group that produces yogurt and fresh dairy products in 40 countries, including the United States.

Proposal 9 also seeks to amend the fluid milk product definition by excluding drinkable food products with

no more than 2.2 percent skim milk protein provided the product contains at least 20 percent yogurt (nonfat yogurt, lowfat yogurt or yogurt) by weight from the fluid milk product definition. Proposal 9 was offered by General Mills, Inc. (General Mills), a food manufacturer that markets such products as Yoplait yogurt and yogurt-containing products in over 100 countries, including the United States.

A proposal published in the hearing notice as Proposal 10 was offered by the Novartis Nutrition Corporation (Novartis). Novartis develops and manufactures a variety of products, including milk-based products, designed to meet specific nutritional needs. Proposal 10 seeks to amend the fluid milk product definition by excluding formulas prepared for dietary use by removing the words "(meal replacement) that are packaged in hermetically-sealed containers." The proposal would remove the 6.5 percent nonfat milk solids standard.

A proposal published in the hearing notice as Proposal 11 seeks to amend the fluid milk product definition by excluding health care beverages distributed to the health care industry. Proposal 11 was offered by Hormel Foods, LLC (Hormel), a wholly owned subsidiary of Hormel Foods Corporation and manufacturer of a variety of food products primarily for the health care industry.

A witness appearing on behalf of NMPF testified in support of Proposal 7. The witness testified that Proposal 7 would close loopholes in the current fluid milk product definition that have allowed products developed as a result of new technology to avoid classification as fluid milk products. The witness said that the 6.5 percent nonfat solids standard should be eliminated and replaced with a 2.25 percent protein standard that would also include whey proteins in determining if the product meets the protein standard. The witness stressed that whey proteins should be specifically defined as whey proteins that are a by-product of the cheese making process. The witness was of the opinion that adoption of Proposal 7 would not alter the classification of any product currently being marketed.

The NMPF witness stressed that Federal order regulations have always adapted to marketing conditions and that the current fluid milk product definition should be amended to reflect changes in market conditions brought about by changes in technology. The witness testified that technology has evolved such that milk can now be separated into numerous components that can be recombined to create a vast number of new milk products. The witness argued that new technology has enabled manufacturers to manipulate milk components, such as removing lactose or substituting whey for other milk solids, to create new products that contain less than 6.5 percent nonfat milk solids. This enables manufacturers of the new products to avoid classification of the new product as a fluid milk product even though the form and use does not differ from what is currently considered a fluid milk product.

The NMPF witness testified that Carb Countdown®, a product manufactured by the H.P. Hood Company, contains whey and has a reduced lactose content that results in its composition being below the 6.5 percent nonfat milk solids standard. According to the witness, two market research studies suggest that the product is similar in form and use to traditional fluid milk. Relying upon a market study conducted by IRI, a market research firm, the witness related that 98.4 percent of Carb Countdown® sales are purchased as a substitute for fluid milk while only 1 percent of its sales are represented as an expansion of the fluid milk market.

The NMPF witness was of the opinion that classifying a product on the basis of protein is appropriate because protein is the highest valued skim component in the marketplace. The witness testified that a 2.25 percent protein standard is the appropriate equivalent of the current 6.5 percent nonfat milk solids standard. The witness asserted that protein has the most value to producers, processors and consumers because it contributes nutrition, flavor and texture to milk. While the witness was of the opinion that all dairy-derived ingredients should be used in computing the true protein standard of a product, the witness did not believe whey and whey product ingredients should be priced at the Class I price. The witness maintained that the use of whey and whey products should not exclude a product from the fluid milk product definition because manufacturers are using whey in their new products to avoid a fluid milk product classification. The witness also noted that instead of relying upon the Food and Drug Administration (FDA) standard, the Department should provide its own definition of whey.

A post-hearing brief submitted on behalf of NMPF reiterated the positions testified to at the hearing. The brief asserted that adoption of a milk protein standard would close regulatory loopholes that prevent products developed as a result of new technology from avoiding classification as a fluid milk product. According to the brief, adoption of a true protein standard merely changes the way milk proteins are accounted for and would not change the classification of any product. However, these changes would capture those products currently formulated to avoid being classified as fluid milk products.

Comments and exceptions to the Recommended Decision filed by NMPF supported the proposed adoption of the 2.25 percent milk protein standard, the inclusion of all nonfat milk ingredients in determining a product's composition, and the Class I pricing of milk protein concentrates (MPCs) used in fluid milk products. NMPF strongly opposed exemption of casein and caseinates used in fluid milk products from Class I pricing. They view such exemptions as differential treatment that could cause market disorder and provide incentives for manufacturers to use these un-priced ingredients in their fluid milk products. NMPF was of the opinion that casein and caseinates are not substantially different than MPCs to justify a different pricing treatment when used in fluid milk products. However, NMPF maintained that only whey resulting from the production of cheese should be exempted from Class I pricing when used as an ingredient in fluid milk products.

NMPF comments and exceptions asserted that manufacturers have historically relied on the quantitative composition standards contained in the fluid milk product definition when making decisions regarding new product development. NMPF expressed opposition to the proposed reference to "form and intended use" in the fluid milk product definition because, in NMPF's opinion, it could cause manufacturers to decrease their use of dairy ingredients in order to prevent a product from being classified and priced as a fluid milk product. NMPF urged abandoning the "form and intended use" standard and relying solely on the protein and nonfat solids compositional standards in making classification decisions.

A witness from DFA, appearing on behalf of DFA and Dairylea Cooperative, Inc., (DLC), testified in support of NMPF's Proposal 7 and Proposal 2. DLC is a dairy farmer-member owned cooperative with 2,400 member farms located in 7 states at the time of the hearing.

The DFA/DLC witness was of the opinion that the purpose of the hearing was to refine the fluid milk product definition to reflect current market conditions brought about by technological innovations to ensure that

dairy farmers are equitably paid for their milk. The witness testified that dairy processing technology, such as ultra filtration and milk component fractionalization, has enabled new products to be developed that were not foreseen when the current classification definition was last considered.

The DFA/DLC witness testified that the current fluid milk product definition does not recognize the value of dairy proteins in the development of new products and therefore does not classify and subsequently price these new products appropriately. The witness claimed that manufacturers formulate their products to contain less than 6.5 percent total nonfat milk solids to avoid a Class I use of milk classification even though these products compete directly with and are substitutes for fluid milk.

The DFA/DLC witness was of the opinion that the form and use of a product should be the primary factor in determining product classification. The witness said that secondary criteria used to make classification determinations should include such factors as product composition, a specific but not exclusive list of included and excluded dairy products, product substitutability and enhancement of producer revenue. The witness argued that eliminating the current total nonfat milk solids standard and replacing it with an equivalent milk protein standard would better reflect the demand for dairy proteins in the marketplace.

The DFA/DLC witness offered a modification to Proposal 7 that the witness said would provide the Department with latitude for classifying future products that are a result of new technology. The witness explained that the modification would allow the Department to make an interim classification decision for a new product and then have up to one year to hold a public hearing to determine the appropriate permanent classification.

The DFA/DLC witness also testified in support of Proposal 2. The witness said that its adoption would recognize the importance of dairy proteins in the marketplace by including all dairy protein sources, including whey and whey products, in computing the product's protein content. However, said the witness, while whey and whey products would be used in classification determinations, those ingredients should not be priced as Class I.

A post-hearing brief submitted on behalf of DFA/DLC reiterated support for adopting a protein standard. The brief reiterated the claim that new technology has enabled some products that contain less than 6.5 percent nonfat milk solids to be classified at a lower use-value than competitors in the market. The brief maintained that adoption of a protein standard would more adequately identify products that should be classified as fluid milk products in light of new fractionation technology.

A witness appearing on behalf of O–AT–KA Milk Products Cooperative, Inc. (O–AT–KA) testified in support of Proposals 2 and 7. O–AT–KA, at the time of the hearing, was a cooperative owned by the dairy farmer-members of Upstate Farms Cooperative, Inc., Niagara Milk Cooperative, Inc., and Dairylea Cooperative, Inc. The witness was of the opinion that the development of new technology necessitates a change to the fluid milk product definition. However, the witness cautioned that changes should not capture all beverages which contain milk solids as fluid milk products because not all milk-containing beverages compete with fluid milk.

The O–AT–KA witness asserted that Proposal 7 should not be thought of as a fundamental change to the current standard; rather that the proposed true protein standard of 2.25 percent is an equivalent to the current 6.5 percent nonfat milk solids standard and should be considered as a needed clarification brought about by technological advances in milk processing. According to the witness, the proposed 2.25 percent standard recognizes protein as a highly valued ingredient in milk products and those products with less than 2.25 percent protein would remain exempt from fluid milk product classification. The witness also advocated the adoption of Proposal 2 that would include whey and whey products in the computation of the protein percentage of the product but would not price the whey ingredients at Class I prices.

A post-hearing brief, submitted on behalf of O–AT–KA, reiterated support for Proposal 7. The brief claimed that the adoption of the protein standard would increase the use of dairy ingredients in beverages which are not "in the competitive sphere of the traditional milk beverages," thus increasing producer revenue. The brief also supported DFA/DLC's modification to Proposal 7 giving the Department authority to make an interim classification decision if a new product is a result of new technology.

Comments and exceptions to the Recommended Decision submitted on behalf of DFA, DLC, O–AT–KA and Upstate Farms Cooperative Inc., hereinafter referred to as "DFA, *et al.*", supported the recommendation incorporating a 2.25 percent true protein standard as a proposal in the Recommended Decision and that inclusion of all milk derived ingredients when computing the 6.5 percent nonfat solids or 2.25 percent true protein criterion. The DFA, *et al.,* comments also endorsed the comments and exceptions submitted on behalf of NMPF.

DFA, *et al.,* expressed opposition to exempting casein and caseinates from Class I pricing when used in fluid milk products. The comments argued that all proteins in a fluid milk product should be priced the same—at the Class I price. DFA, *et al.,* also abandoned their position taken at the hearing to not price whey derived from cheese making at the Class I price when used in fluid milk products. DFA, *et al.,* was of the opinion that providing exemption for ingredients will only serve to encourage manufacturers to use price-exempted ingredients to formulate a finished product that would be compositionally identical to fluid milk.

DFA, *et al.,* took exception to relying on form and intended use as the final determinate in classifying fluid milk products. DFA, *et al.,* argued that manufacturers rely on the compositional criteria contained in the fluid milk product definition to decide how to formulate a new product, assess how their new product would be classified, and ultimately determine their raw milk ingredient costs. Their exceptions asserted if form and intended use criteria supersedes compositional standards, manufacturers would develop fewer dairy based products because of the perceived uncertainty in how that product's ingredients could be classified and priced. DFA, *et al.,* argued that the 2.25 percent protein standard should be the ultimate determinate of a fluid milk product and, if such compositional standard becomes inadequate, a hearing could be held to establish updated compositional standards.

A post-hearing brief submitted on behalf of Select Milk Producers, Inc. (Select) and Continental Dairy Products (Continental) expressed support for adoption of a protein standard as a component of the fluid milk product definition. According to the brief, Select and Continental are dairy-farmer owned cooperatives that market milk on various Federal orders. The brief argued that adoption of a protein standard is a needed change to reflect changed marketing conditions brought about by new manufacturing technology without fundamentally altering current regulations. The brief stressed that milk proteins are valuable ingredients in drinkable products in the market and

that classification and pricing determinations should be reflective of this.

Comments to the Recommended Decision filed on behalf of Select and Continental specifically supported the proposed adoption of a 2.25 percent true protein standard to the fluid milk product definition and pricing of MPCs used in fluid milk products at the Class I price. Select and Continental also endorsed the comments and exceptions filed by NMPF.

Select and Continental's exceptions asserted that as a result of new milk-processing technology, there is no barrier to using casein as a substitute ingredient for MPCs. In this regard, Select and Continental took exception to exempting casein and caseinates from Class I pricing because it would serve to provide an incentive to manufacturers to use them as a substitute for MPCs to avoid Class I regulation. The brief said relying on form and intended use to override compositional standards in making classification determinations would add needless ambiguity and subjectivity.

A witness appearing on behalf of H.P. Hood testified in opposition to any changes to the fluid milk product definition. The witness was of the opinion that the fluid milk product definition should not be amended in a manner that would classify more dairy products as fluid milk products unless data is provided which would conclude that such products compete directly with fluid milk and such amendments would enhance producer revenue.

The H.P. Hood witness asserted that if Proposal 7 was adopted and resulted in the reclassification of some products as fluid milk products, the change would only affect a small number of products and the enhancement of producer revenue would be minimal. If ingredient substitution for milk occurred as a result of adopting other proposals, the witness said, producer revenue could actually decrease. The witness was of the opinion that adoption of proposals that broaden the fluid milk product definition would stifle product innovation and discourage the use of dairy-derived ingredients because of the resulting increased costs to the manufacturer. These results, the witness said, should not be encouraged by the Federal milk order program.

A post-hearing brief submitted on behalf of H.P. Hood reiterated opposition to Proposal 7. The brief maintained that no disorderly marketing conditions exist to warrant a change to the fluid milk product definition and that proponents of the protein standard failed to meet the burden of proof required by the AMAA to make a regulatory change. The H.P. Hood brief reviewed many factors used by the Department in previous classification decisions to determine the proper classification of Class I products. The list included, but was not limited to, demand elasticities, enhancement of producer revenue, and product competition. The brief stated that proponents failed to provide adequate data addressing these factors or prove that disorderly marketing conditions exist to warrant a change, and urged the Department to terminate the proceeding.

Comments and exceptions filed by H.P. Hood took exception to the Recommended Decision's proposed adoption of a 2.25 percent protein standard and its reliance on form and intended use as a primary factor in making classification determinations. H.P. Hood reiterated its opinion that the proponents of the protein standard did not provide adequate justification for its adoption. Furthermore, H.P. Hood was of the opinion that it is not proper to make regulatory changes as preventive measures to possible disorderly marketing conditions and is a major deviation from historical milk order policy. The exceptions stressed that it is only proper to react to marketing conditions once they occur. In their exceptions, H.P. Hood also presented a list of questions regarding the application of how a product's form and intended use would be determined by the Department. H.P. Hood claimed that relying on form and intended use would be extremely burdensome and serve to inhibit new product development.

A witness appearing on behalf of Leprino Foods Company (Leprino) testified in opposition to the adoption of the 2.25 percent protein standard contained in Proposal 7. According to the witness, Leprino operates nine plants in the United States that manufacture mozzarella cheese and whey products. The witness was of the opinion that a protein standard would reclassify products such as sport and protein drinks and yogurt smoothie products (formulated with ingredients such as whey and whey products) as fluid milk products. The witness stressed that broadening the fluid milk product definition to account for all dairy derived ingredients could lessen the demand for such ingredients. The witness speculated that manufacturers may seek out other less costly non-dairy ingredient substitutes which would result in decreased producer revenue.

Exceptions to the Recommended Decision filed by Leprino expressed opposition to the adoption of a 2.25 true protein standard in the fluid milk product definition. Leprino argued that this standard should not be adopted unless it is modified to specifically exclude beverages that do not resemble or compete with fluid milk. Leprino was of the opinion, that without such exclusion, to classify products based on form and intended use could cause many non-traditional products, such as sport and nutritional beverages, to be classified as fluid milk products. The end result, argued Leprino, would be a lowered demand for dairy ingredients that may offset any revenue gains to producers by including additional products as fluid milk products.

A witness appearing on behalf of Dannon Company, Inc. (Dannon) testified in opposition to Proposals 2 and 7. Dannon is a wholly owned subsidiary of the Dannon Group that produces yogurt and fresh dairy products in 40 countries, including the United States. The witness was opposed to the adoption of a protein standard and to the inclusion of whey when calculating the nonfat milk solids content of a product because, the witness said, it was not the original intent of the fluid milk product definition to include these milk-derived ingredients. The witness believed that adoption of a protein standard would cause more products to be classified as fluid milk products even though they do not compete with fluid milk. The witness argued that protein is not a major component of fluid milk products and therefore using a protein standard would not be appropriate for making classification determinations. The witness speculated that if a protein standard was adopted, it could stifle product innovation or cause food processors to use non-dairy ingredients in their food products. The witness said that if whey proteins are included, manufacturers may look for less expensive non-dairy ingredients to be used as a viable substitute.

A post-hearing brief submitted on behalf of Dannon reiterated their opposition to the adoption of a protein standard claiming that adequate justification for such a change was not given by proponents at the hearing and that the mere ability to test for milk proteins does not justify its adoption.

A post-hearing brief submitted on behalf of the National Yogurt Association (NYA) expressed opposition to Proposal 7. According to the brief, NYA is a trade association representing manufacturers of live and active culture yogurt products and suppliers of the yogurt industry. The brief claimed that proponent testimony was inconsistent regarding the proposals' impact on product classification and stated that if

the 2.25 percent protein standard was adopted, at least one yogurt-containing product would be reclassified as a fluid milk product.

The NYA brief also asserted that proponents did not provide a clear picture of how Proposal 7 would be implemented. Specifically, the brief noted that the following were not addressed: (1) How wet and dry whey would be handled; (2) how whey from cheese production would be differentiated from whey from casein production; and (3) how products that meet the proposed 2.25 percent true protein standard and contain whey and other proteins would be classified and priced. The NYA brief speculated that including whey in the protein calculation would lead to more products being classified as fluid milk products and cause manufacturers to seek out less costly non-dairy ingredients. The potential loss to producer revenue by substitution with non-dairy ingredients, concluded the brief, is not supported by the record.

A post-hearing brief submitted on behalf of the National Cheese Institute (NCI) expressed opposition to Proposal 7 and claimed that its adoption would suppress the use of dairy-derived ingredients, particularly whey proteins. According to the brief, NCI is a trade association representing processors, manufacturers, marketers, and distributors of cheese and related products. NCI claimed that proponents of Proposal 7 did not identify any specific marketplace disorder that would be corrected by the adoption of a protein standard or list any product that would be reclassified if the fluid milk product definition were amended. The brief reviewed previous rulemaking decisions where proposals were denied because proponents failed to demonstrate that disorderly marketing conditions were present.

The NCI brief stressed that use of dairy-derived ingredients in a product should not automatically qualify a product as a competitor of fluid milk or that their classification in a lower-valued use negatively affects producer revenue. The brief further maintained that proponents did not adequately address why whey proteins should be included in determining if the product met the proposed protein standard for a fluid milk product and why whey should be priced at the Class I price. The brief concluded that whey should be excluded from the fluid milk product definition because its inclusion would lead to products being classified as fluid milk products even when they do not compete with fluid milk.

A post-hearing brief submitted on behalf of Sorrento Lactalis, Inc. (Sorrento) objected to the adoption of a protein standard. According to the brief, Sorrento is a manufacturer that operates five cheese plants throughout the United States. The brief stated that adoption of a milk protein standard as part of the fluid milk product definition would reduce the demand for dairy ingredients, especially whey proteins, which in turn would result in increased costs to manufacturers and reduced producer revenue.

A witness testifying on behalf of H.P. Hood was of the opinion that if the Department found that changing the fluid milk product definition was warranted, adoption of a modified Proposal 5 would be appropriate. The witness said that adoption of Proposal 5 would provide the Department with standards to determine if a dairy product with less than 6.5 percent nonfat milk solids competes with and displaces fluid milk sales, which would justify classification of the product as a fluid milk product. The witness also noted that if Proposal 5 was adopted, a new product with less than 6.5 percent nonfat milk solids and route distribution in a Federal milk marketing area of less than 3 million pounds would be exempted from classification as a fluid milk product. This distribution criteria, the witness explained, would allow manufacturers to test market a new product with the assurance that it would not be classified as a fluid milk product until the distribution threshold was exceeded.

A witness appearing on behalf of Leprino testified in support of Proposal 5. The witness was of the opinion that fluid milk products should only be those products that meet the FDA standard of identity for milk and cultured buttermilk and products that compete with milk and cultured buttermilk. The witness testified that the fluid milk product definition is currently too broad and as a result, has lessened the demand for dairy ingredients in new non-traditional dairy products because of the possibility of being classified as a fluid milk product. The witness argued that many of these new products do not compete for sales with fluid milk and their use of dairy-derived ingredients should not qualify them to be defined as a fluid milk product.

The Leprino witness explained that advances in technology have allowed the creation of dairy-derived ingredients through milk fractionation. According to the witness, dairy manufacturers are avoiding investing in some product innovation because of the regulatory burden and increased costs that are associated with manufacturing a fluid milk product.

A witness testifying on behalf of DFA/DLC was opposed to the adoption of Proposal 5. The witness said that Proposal 5 would place an undue burden on the Department in making classification determinations and would also extend Class II classification to more products, neither of which the witness supported. The post-hearing brief submitted by DFA/DLC reiterated their opposition.

A witness appearing on behalf of Bravo! Foods International Corporation; Lifeway Foods, Inc.; PepsiCo; Starbucks Corporation; and Unilever United States, Inc.; testified in opposition to all proposals that would reduce or eliminate the 6.5 percent minimum nonfat milk solids standard, adopt a protein standard, or include whey in determining the nonfat milk solids content of a product. Hereinafter, these companies are referred to collectively as "Bravo!, *et al.*"

A post-hearing brief submitted on behalf of Bravo!, *et al.,* urged the termination of the proceeding except for the portion addressing the exemption of yogurt and kefir products from the fluid milk product definition. Bravo!, *et al.,* asserted that the hearing record does not support adoption of a protein standard. The brief stated that decisions to amend Federal order provisions are not made without clear evidence of disorderly market conditions, the potential shortage of milk for fluid use, or lowering of producer revenue. The brief also discussed letters sent to the Department by producers and manufacturers which urged that a hearing be postponed because more analysis and market data was needed to justify amending the current fluid milk product definition. Bravo!, *et al.,* argued that the hearing was held prematurely, without allowing for adequate study and market data research on the proposals that are under consideration. According to the brief, more time was needed to accurately determine the impact of new milk products on the marketplace.

The Bravo!, *et al.,* brief summarized hearing testimony from previous Department rulemaking decisions in which no changes were recommended due to a lack of evidence to support a regulatory change. According to Bravo!, *et al.,* proponents did not provide evidence of disorder in the marketplace nor did they substantiate their claims that products currently in the market would not be reclassified if a protein standard was adopted. On the basis of such conditions, the brief concluded

that the current fluid milk product definition is adequate.

If the Department did not terminate the proceeding, the Bravo!, *et al.,* brief recommended that the 6.5 percent nonfat milk solids standards remain, that the computation of nonfat milk solids not be made on a milk equivalency basis, and that whey and whey ingredients be excluded from the computation.

Exceptions to the Recommended Decision filed by Bravo!, *et al.,* opposed the proposed adoption of the 2.25 percent protein compositional standard and reiterated that adoption of a protein standard would have a negative effect on dairy product innovation as manufacturers would use lower priced non-dairy proteins as substitutes. Bravo!, *et al.,* asserted that the Department did not give enough consideration to the lowering of producer revenue that could occur due to the predicted ingredient substitution.

Exceptions filed by Bravo!, *et al.,* also opposed the Department's use of form and intended use as one of the factors in making classification determinations. The comments acknowledged that the AMAA authorized the Federal Milk Marketing Order (FMMO) program to rely on form and intended use in making classification determinations. However, Bravo!, *et al.,* asserted that historically the FMMO program applied the form and use criteria by using compositional standards. Bravo!, *et al.,* claimed that by specifically including the form and intended use criteria in the order language the Department could ignore a product's composition and arbitrarily classify products as fluid milk products even though they did not compete with fluid milk. Bravo!, *et al.,* predicted that the specific inclusion of form and intended use in the fluid milk product definition would hamper the development of new products and the use of dairy ingredients because of the uncertainty manufacturers could face in how the milk components of their products would be classified.

A witness appearing on behalf of Fonterra USA, Inc. (Fonterra) testified in opposition to proposals that would include MPCs in determining if the product met the protein standard of the fluid milk product definition. Fonterra at the time of the hearing was a wholly owned subsidiary of Fonterra Co-operative Group Limited, a New Zealand based dairy cooperative owned by 12,000 New Zealand dairy farmers. Fonterra operates plants within the United States that produce, among other things, MPCs. The witness stressed that changes to the fluid milk product definition would increase ingredient costs, discourage manufacturing companies from using dairy ingredients in their products, and force those companies to seek other less costly substitutes such as soy and soy products.

A post-hearing brief submitted on behalf of Fonterra reiterated their objection to changing the nonfat milk solids standard and predicted that adoption of a protein standard would make classification decisions unnecessarily complicated without providing additional benefits to producers. The brief asserted that the hearing record did not contain a sufficient economic analysis on the possible benefits that adopting a protein standard would have on producer revenue or its impact on the dairy industry.

The Fonterra brief speculated that adoption of a milk protein standard would decrease the market price for milk proteins, discourage new product development, and encourage the substitution of producer milk with non-dairy ingredients. The brief noted that the annual growth rate of soy and soy products in nutritional products from 1999 to 2003 was 16.5 percent, while the growth of milk proteins in nutritional products only increased 10.1 percent over the same time period. The brief predicted that if protein prices rise as a result of the adoption of a milk protein standard, the growth of soy proteins will likely increase because they could be substituted for more costly milk proteins.

The Fonterra brief also stated that the hearing record does not reveal disorder in the market by the application of the current fluid milk product definition and therefore concluded that amending the fluid milk product definition is not justified. The Fonterra brief argued that proponents did not provide adequate reasoning for including whey proteins in determining if a product met the protein standard but not pricing whey proteins the same as other milk proteins. Furthermore, the brief stated that proponents did not propose a method for differentiating between whey proteins resulting from cheese production and whey proteins from other sources.

Comments filed on behalf of Fonterra took exception to the Recommended Decision's proposed adoption of a 2.25 percent true milk protein compositional standard. Fonterra reiterated that proponents did not meet the burden of proof needed to substantiate the adoption of a protein standard. According to the comments, proponents did not indicate if adoption of the standard would remedy any indications of market disruption or reclassify some products as fluid milk products.

Fonterra's comments reviewed numerous rulemaking proceedings in which, Fonterra concluded, the Department declined to adopt proposed changes to marketing orders because of a lack of evidence that a change would promote orderly marketing conditions. Fonterra argued that the Recommended Decision did not adequately consider evidence asserting that adoption of the milk protein standard would not increase the cost for dairy ingredients, encourage the substitution of lower cost non-dairy ingredients, and ultimately lower producer revenue. Fonterra was of the opinion that before making a Final Decision, further analysis of the proposals was needed to fully evaluate the possible economic impact to producers and manufacturers as a result of adoption of the protein standard.

Fonterra stated that the Department's recommended adoption of an "either/or" use of the protein and nonfat solids standard was not contained in any proposal discussed at the hearing and that the Department did not adequately explain how the use of both a protein and nonfat solids standard would provide for the orderly marketing of milk or increase producer revenue.

The comments filed by Fonterra also argued that the Department uses this rulemaking proceeding to justify a change in policy that the Department previously attempted to adopt without undertaking the formal rulemaking process. Fonterra stated that historical Departmental policy has been to exempt such products as casein, sodium caseinate, lactose, whey, and MPCs from use in the nonfat milk solids calculation of a product. In 2004, Fonterra said, the Department attempted to include MPCs and other previously exempted dairy ingredients in the nonfat solids calculation; however, that administrative decision was overturned by an Administrative Law Judge. Fonterra claimed that proposing to include all milk derived protein ingredients in the calculation of a product's nonfat solids or protein composition is an attempt to change historical policy without adequate analysis or justification.

Fonterra also took exception to having some ingredients included in the calculation of a product's composition but would not be priced in a final product. Fonterra claimed that whey is used in nearly identical products as MPCs and should therefore be priced the same. Fonterra was of the opinion that pricing whey and MPCs differently would violate the United States' World Trade Organization obligations. Fonterra

characterized whey production as primarily domestic, but that most MPCs are imported. Accordingly, they concluded that excluding whey from Class I pricing essentially places an illegal tariff on imported MPCs.

A witness appearing on behalf of the American Beverage Association (ABA) testified in opposition to all proposals seeking to amend the fluid milk product definition. ABA is a trade association that represents beverage producers, distributors, franchise companies, and their supporting industries. The witness was of the opinion that the current fluid milk product definition already properly classifies dairy products and that there is insufficient evidence to warrant any changes. The witness claimed that any change would broaden the fluid milk product definition to include products that contain only small amounts of milk. The witness argued that many new beverage products which contain small amounts of milk or milk ingredients do not compete with fluid milk but do compete with soft drinks, juices and bottled water. The witness asserted that amending the fluid milk product definition to include some dairy ingredients not currently considered would increase manufacturers cost of production, result in stifled innovation of new products and encourage the use of non-dairy ingredients as substitutes for milk-derived ingredients.

A witness appearing on behalf of Ohio Farmers Union (OFU) testified in opposition to any change to the fluid milk product definition. OFU is a nonpartisan, grassroots, general farm organization representing more than 300,000 family farms nationwide according to their web site. The witness testified that the primary purpose of the order program was to provide consumers with a reliable supply of safe and wholesome milk. The witness asserted that MPCs, caseinates, whey proteins, and other similar milk-derived ingredients have functional and nutritional characteristics different than fluid milk. Accounting for those ingredients in the fluid milk product definition, the witness said, would undermine the goal of the order program. The witness stressed that if the fluid milk product definition were amended, consumer confidence in the long established perception of milk as a fresh, pure and wholesome beverage would be diminished and would thus threaten the economic viability of domestic producers.

A witness appearing on behalf of the Milk Industry Foundation (MIF) testified in opposition to amending the fluid milk product definition. According to the witness, MIF is an organization with over 100 member companies that process and market approximately 85 percent of the fluid milk and fluid milk products consumed nationwide. The witness stated that simply because a beverage contains milk or other dairy-derived ingredients does not prove that those products compete with fluid milk or that such competition lowers producer revenue.

The MIF witness asserted that previous Federal milk order rulemaking decisions have required data and analysis to prove that an amendment was warranted. According to the witness, the proponents of proposals for changing the fluid milk product definition did not provide such data and analysis. Along this theme, the witness said that proponents should have provided data such as the market share held by products that do not fall under the current fluid milk product definition but would be included under any proposed change, cross price elasticity of demand analysis of products which meet the existing fluid milk product definition and of products that would be classified as a fluid milk product if any of their proposals were adopted, and an own-price elasticity of demand analysis for products that would be reclassified.

A post-hearing brief submitted on behalf of MIF reiterated their opposition to any changes to the current fluid milk product definition. The brief urged that if the Department does amend the fluid milk product definition, it should exclude all whey-derived protein products in determining if a product meets the fluid milk product definition. The brief stated that MIF has continuously opposed a hearing to consider amending the fluid milk product definition because not enough evidence is available to warrant a change. The brief maintained that proponents did not offer adequate data at the hearing to demonstrate that there is disorder in the marketplace that can be remedied by adoption of a protein standard.

The MIF brief expanded its testimony by citing numerous rulemaking decisions that denied proposals on the basis that adequate evidence was not presented to warrant amendments to order provisions. MIF stressed that the mere existence of beverages containing dairy-derived ingredients is not evidence of marketwide disorder.

Exceptions filed on behalf of International Dairy Foods Association (IDFA) asserted that because evidence doesn't demonstrate a need for change, no changes to the fluid milk product definition should be made. IDFA is a trade organization whose members include MIF, NCI and the International Ice Cream Association (IICA). According to their exceptions, IDFA represents more than 85 percent of the milk, cultured products, cheese and frozen desserts produced and marketed in the United States. IDFA reiterated arguments expressed by MIF at the hearing and in MIF's post-hearing brief. Their exception claimed that the hearing record did not demonstrate that products containing less than 6.5 percent nonfat solids and more than 2.25 percent protein are causing disorderly marketing conditions because they are not currently classified as fluid milk products.

IDFA's comments also opposed the specific inclusion of the form and intended use criteria in the fluid milk product definition and argued that the definition should continue to contain only compositional criteria. IDFA wrote that manufacturers' product development decisions are in part determined by ingredient costs. Subjective criteria such as form and intended use, wrote IDFA, could impede new product development because a manufacturer would be uncertain of ingredient costs until a final product had been classified. IDFA's exceptions opposed the inclusion of whey when computing a product's composition because of inconsistent justification by proponents as to why whey used to produce fluid milk products should not also be priced as Class I. IDFA exceptions stated that the proponents of the protein standard did not demonstrate that disorderly marketing conditions exist in the absence of the protein standard. IDFA exceptions concluded that the adoption of amendments proposed in the Recommended Decision would only serve to lower producer revenue.

Comments filed on behalf of Grande Cheese opposed all the proposed changes to the fluid milk product definition contained in the Recommended Decision. Grande Cheese is a cheese manufacturer located in the State of Wisconsin. Grande Cheese expressed support of the opinions expressed in the exceptions to the Recommended Decision filed by IDFA.

A witness appearing on behalf of the National Family Farm Coalition testified in opposition to all proposals that would amend the fluid milk product definition. The witness testified that MPCs do not meet FDA's Generally Recognized as Safe (GRAS) standards as legal food ingredients. Furthermore, the witness said, MPCs have not been subjected to scientific testing to determine if they are safe for human

consumption and should not be allowed in milk products.

A witness appearing on behalf of Public Citizen testified in opposition to proposals that seek to amend the fluid milk product definition. According to the witness, Public Citizen is a non-profit consumer advocacy organization with approximately 150,000 members. The witness was opposed to any change in the fluid milk product definition that would, in the witness' opinion, encourage the use of MPCs.

Two Pennsylvania dairy farmers testified in opposition to any change to the fluid milk product definition. The producers opposed all proposals that would allow the use of caseinates and MPCs in fluid milk products. They asserted that MPCs are not allowed in the production of standardized cheese and should also not be allowed in the production of fluid milk products.

A post-hearing brief submitted on behalf of the American Dairy Products Institute (ADPI), an association representing manufacturers of dairy products, offered support for amending the fluid milk product definition to include milk beverages that compete directly with fluid milk. However, the brief cautioned against developing a fluid milk product definition that would include non-traditional beverages and smoothie type products (yogurt-containing beverages). The brief recommended that an economic study be conducted to determine the possible impacts of the proposed changes before action is taken to amend the fluid milk product definition.

A post-hearing brief submitted on behalf of General Mills contended that the fluid milk product definition should not be amended because proponents did not provide sufficient evidence or data to justify a change. The brief maintained that the hearing record is not clear on how proposals would be implemented or on the impact to producers, manufacturers, and consumers if the protein standard was adopted. General Mills contended that before a change is made, the Department should conduct an economic analysis to evaluate how protein and dairy products are competing in the marketplace and how the adoption of a protein standard would impact the marketplace. If a protein standard was recommended for adoption, General Mills recommended that whey not be included in the protein calculation, or if whey is included, that a 2.8 percent protein standard be adopted in order to maintain the status quo.

Exceptions to the Recommended Decision filed by General Mills opposed the adoption of the true protein compositional standard. However, General Mills was of the opinion that if the Department continued to support the protein standard, then any whey components should be excluded from determining a final product's protein content. General Mills purported that the inclusion of whey in the protein calculation, even if not priced at Class I, may lead manufacturers to increase their use of non-dairy ingredients as substitutes.

General Mills was also opposed to relying on form and intended use in classification determinations. According to their exceptions, the form and use criteria would cause manufacturers to be less certain of a product's classification which would discourage using dairy ingredients in new products. General Mills noted that if the Department decides to not alter its Recommended Decision then it should clarify in a Final Decision that only products that compete with or are a substitute for fluid milk would be classified as a fluid milk product.

A post-hearing brief submitted on behalf of New York State Dairy Foods, Inc. (NYSDF) opposed amending the fluid milk product definition. According to their brief, NYSDF is a trade association representing dairy product processors, manufacturers, distributors, retailers, and producers in the Northeast United States. The brief argued that products produced with the use of new fractionation technology are a small portion of the milk beverage market. They were of the opinion that such products are still too new to determine their impact on Class I sales and producer revenue. The brief also asserted that the adoption of a protein standard as part of the fluid milk product definition would discourage new product development and would increase costs that would result in reduced sales of dairy-derived ingredients. The brief urged that the proceeding be terminated.

Comments and exceptions to the Recommended Decision filed on behalf of Glanbia Foods (Glanbia) opposed the proposed adoption of the true protein compositional standard and the specific inclusion of form and intended use as a factor in classification determinations. Glanbia operates two cheese plants and two whey plants that collectively process nearly 4 billion pounds of milk annually. Glanbia asserted that adoption of a true protein standard would lead to stifled innovation of milk derived ingredients in new products because the manufacturing industry would increase its use of non-dairy ingredients as substitutes. Their exceptions claimed that the hearing record does not contain evidence that adoption of a protein standard would ultimately benefit producers or remedy a market disorder. Glanbia also argued that the Department's reliance on form and intended use in classification determinations would similarly discourage the use of dairy ingredients.

A professor from Cornell University testified regarding a research study conducted by the Cornell Program on Dairy Markets and Policy that focused on the demand elasticity's of various dairy products. The witness did not appear in support of or in opposition to any proposal presented at the hearing. The witness explained that the goal of the study was to ascertain the extent to which product innovation and classification decisions influence producer revenue. The study was designed to evaluate four hypothetical dairy products and test the effect that a range of classification determinations would have on producer revenue. The witness explained the study and concluded that the impact on producer revenue of a new product being reclassified from Class II to Class I was likely to be small, plus-or-minus $0.01 per hundredweight (cwt). However, the witness added, if non-dairy ingredients were substituted as a result of the reclassification, the study predicted that producer revenue would be lowered by $0.22 per cwt. The witness concluded that while the financial returns from product reclassification could be positive, the resulting ingredient substitution, which could take place, would result in a significant negative impact on producer revenue.

The post-hearing brief submitted by NMPF also addressed concerns articulated at the hearing regarding the need for a demand elasticity study to address the issue of product substitution before amending the fluid milk product definition. The brief asserted that a demand elasticity study would not take into account newly emerging products, changing consumer preferences, and product innovations that could change the competitive relationships between products and therefore would not provide any relevant data. The brief also argued that the economic model created by Cornell University and discussed at the hearing contained many incorrect assumptions and thus concluded that the study results were flawed.

The DFA/DLC brief also rebutted opposition to Proposal 7 which called for studies of product usage or demand elasticity's before considering amendments to the fluid milk product definition. The brief asserted the previous amendments to the classification system have been made

without such economic studies and that this proceeding should be handled in the same manner.

A witness appearing on behalf of Bravo! Foods International Corporation, Lifeway Foods, Inc. (the principal makers of kefir in the U.S.), PepsiCo, Starbucks Corporation and Unilever United States, Inc. (Bravo! *et al.*), proposed at the hearing that kefir, as well as yogurt-containing beverages, be exempted from the fluid milk product definition.

A witness appearing on behalf of Dannon testified in support of Proposal 8 that would exclude yogurt containing beverages from the fluid milk product definition. The witness provided a definition of yogurt containing beverages as any beverage containing at least 20 percent yogurt (which is in concert with Proposal 9). The witness argued that yogurt containing beverages are not similar in form and use to fluid milk products and should be excluded from the fluid milk product definition. The witness testified that Dannon currently manufactures yogurt containing products which are classified as both fluid milk products and Class II products. The Dannon witness maintained that regardless of the classification, none of its products compete with fluid milk. According to the witness these products should all be classified as Class II. The witness emphasized that yogurt and yogurt-containing products use unique cultures, ingredients, and production technology that differentiate them from fluid milk product production. Furthermore, the witness said yogurt products' packaging, taste, mouth feel, shelf-life and marketing placement in grocery stores distinguishes them from fluid milk.

The Dannon witness presented market research it had conducted. The witness stated, based on the research, that yogurt-containing beverages are consumed as a food product and not as an alternative to fluid milk. The witness claimed that less than one percent of potential consumers of a Dannon yogurt-containing product consume the product as a substitute for fluid milk. Additionally, the witness noted that Dannon advertises its yogurt-containing products as a substitute for snacks, not fluid milk. The witness concluded from this that yogurt-containing products are different than fluid milk, do not compete with fluid milk in the marketplace and therefore should not be classified the same as a fluid milk product. The witness also testified in opposition to Proposal 9 but only with respect to the inclusion of a protein threshold which Dannon does not consider justified. The witness noted that Dannon does support the proposed 20 percent minimum yogurt content standard that such products should meet as a condition for being exempted from the fluid milk product definition.

A post-hearing brief submitted on behalf of Dannon reiterated its hearing testimony. The brief stated that fluid milk products should only be those products that are closely related to, or compete with, fluid milk for sales. That brief stressed that yogurt-containing beverages are dissimilar to fluid milk beverages and are used as a food replacement, not as a beverage substitute. The brief noted that in 2004, more than 37 percent of Dannon's sales were from products developed within the last 5 years and stressed that classifying all milk drinks with milk-derived ingredients as fluid milk products would result in decreased innovation for developing additional uses for milk.

A witness appearing on behalf of General Mills testified in support of Proposal 9. The witness was of the opinion that USDA should classify products primarily on the basis of form and use. The witness asserted that drinkable yogurt products, while containing milk ingredients, are food products and do not compete with fluid milk. The witness explained that drinkable yogurt products were created to meet a change in consumer preferences for convenience and portability. The witness presented market research conducted by Yoplait demonstrating that consumers view drinkable yogurt products as alternatives to traditionally packaged yogurt and other nutritional snacks, not fluid milk. The witness asserted that 80 percent of Yoplait drinkable yogurt smoothie consumers would substitute another yogurt product for the smoothie.

The General Mills witness supported the current classification system contending that its modification raises a host of issues and questions. However, if USDA determined that a change to the fluid milk product definition is appropriate, the witness urged adoption of Proposal 9 to exclude drinkable yogurt products that contain at least 20 percent yogurt by weight and no more than 2.2 percent skim milk protein from the fluid milk product definition. According to the witness, including drinkable yogurt products in the fluid milk product definition would increase costs to manufacturers that would stifle innovation and result in a shift towards using non-dairy ingredients. The witness said manufacturers would choose to reformulate products using less milk and milk proteins resulting in reduced dairy producer income.

A post-hearing brief submitted on behalf of General Mills maintained that ample evidence regarding the fundamental differences of fluid milk and yogurt containing beverages was presented at the hearing to justify exempting yogurt containing products with more than 20 percent yogurt from classification as a fluid milk product. Comments and exceptions to the Recommended Decision filed on behalf of General Mills reiterated this view.

Two witnesses appearing on behalf of the National Yogurt Association (NYA) testified in support of proposals that would exempt yogurt containing products from the fluid milk product definition. NYA is a national trade association representing the producers of yogurt products and their suppliers. The witnesses testified that previous regulatory decisions made by USDA emphasized that products classified as fluid milk products should be intended to be consumed as beverages and compete with fluid milk. The witnesses expressed disagreement with a classification decision published in the early 1990's that classified drinkable yogurt products as fluid milk products. The witnesses were of the opinion that in both form and use, yogurt and drinkable yogurt products compete with other food products, not fluid milk, and should be classified as Class II products. The witnesses explained that yogurt products are produced and shipped nationally by a few manufacturers, have a shelf-life averaging 30–60 days, have a texture and taste distinctly different than fluid milk and are positioned in retail stores separate from fluid milk. The witnesses noted that yogurt-containing beverages were developed as a substitute for spoonable yogurt products, not fluid milk.

The NYA witnesses were of the opinion that the increase in producer revenue resulting from currently classifying drinkable yogurt products as fluid milk products isn't and would not overcome the decrease in revenue due to the loss of sales from an increase in the price of drinkable yogurt products.

A post-hearing brief submitted on behalf of NYA reiterated support for excluding all products containing at least 20 percent yogurt provided that the yogurt meets the standard of identity for yogurt. According to the brief, the 20 percent content requirement would ensure that only products whose characterizing ingredient is yogurt would be excluded from the fluid milk product definition. The brief also indicated that if USDA determines not to exclude yogurt containing products,

then NYA strongly opposes any change to the current fluid milk product definition.

The NYA brief argued that consumer surveys and marketplace data provided by Dannon and General Mills that explained how yogurt-containing products are fundamentally different from fluid milk were not contradicted at the hearing. The brief also noted that while Dairy Farmers of America (DFA) and National Milk Producers Federation (NMPF) testified that consumers are buying low-carbohydrate milk instead of fluid milk, they did not offer similar evidence for yogurt-containing products.

Comments and exceptions to the Recommended Decision filed on behalf of NYA supported the proposed exemption of drinkable yogurt products from the fluid milk product definition. The NYA comments reiterated arguments it made at the hearing and in its post-hearing brief, and asserted that the hearing record contains no evidence to support that drinkable yogurt products are similar to fluid milk.

A witness appearing on behalf of Bravo!, *et al.,* testified in support of amendments that would exempt yogurt containing products and kefir from the fluid milk product definition. The witness argued that both products are compositionally different than fluid milk and do not compete for sales with fluid milk. Furthermore, the witness noted that drinkable yogurt and kefir products are one of the fastest growing segments in the dairy industry, providing a large opportunity for the expanded use of dairy-derived ingredients which should not be hampered by the additional costs of such ingredients being priced at Class I.

Comments and exceptions filed on behalf of Bravo!, *et al.* and by Lifeway Foods, separately expressed support for the Recommended Decision's proposed exemption of kefir, and drinkable yogurt products that contain at least 20 percent yogurt.

A witness appearing on behalf of Leprino Foods Company (Leprino) testified that if USDA recommended amending the fluid milk product definition, then Leprino supported the adoption of Proposal 9 to exclude products containing at least 20 percent or more yogurt by weight from the fluid milk product definition. According to the witness, Leprino operates nine plants in the United States that manufacture mozzarella cheese and whey products. The witness also was of the opinion that yogurt containing products do not compete with fluid milk and should be classified as Class II products. The witness stressed that if these products are not excluded from the fluid milk product definition, then Leprino strongly opposed the adoption of a protein standard to be part of the fluid milk product definition.

Comments and exceptions filed on behalf of Leprino supported the Recommended Decision's proposed exclusion of yogurt containing beverages and kefir from the fluid milk product definition.

Comments filed by Fonterra USA, Inc. (Fonterra) supported the Department's recommendation that yogurt containing beverages should be exempted from the fluid milk product definition but took exception to the yogurt content in beverages containing less that 20 percent yogurt (*i.e.* Class I) not being subject to an "upcharge", as are other milk ingredients. Fonterra is a wholly owned subsidiary of Fonterra Co-operative Group Limited, a New Zealand based dairy cooperative owned by 12,000 New Zealand dairy farmers.

The witness appearing on behalf of NMPF testified in opposition to exempting yogurt-containing beverages from the fluid milk product definition. The witness was of the opinion that these products are similar in form and use to other flavored fluid milk products and should be considered a substitute for fluid milk. In its post-hearing brief, NMPF maintained its opposition to proposals that would exclude drinkable yogurt products from the fluid milk product definition.

Comments and exceptions filed by NMPF in response to the Recommended Decision opposed the exemption of kefir and yogurt containing beverages from the fluid milk product definition arguing that an exemption is inconsistent with the principle of form and intended use. NMPF reiterated arguments made at the hearing and in its post-hearing brief that kefir and yogurt containing beverages are almost identical in form to fluid milk and are used as beverages. NMPF purported that data presented at the hearing by yogurt manufacturers demonstrating that yogurt containing beverages did not compete with fluid milk was misleading and the exemption would be difficult to enforce. NMPF stated that because kefir has no standard of identity (as does yogurt, for example) manufacturers could name an array of products as kefir to avoid classification as fluid milk products. NMPF also said the standard of identity for yogurt was too broad and its identity standard is currently under review by the FDA. NMPF claimed that exempting yogurt containing beverages from the fluid milk product definition could create an enormous regulatory loophole that could be exploited to avoid classification of new products as fluid milk products.

The witness appearing on behalf of Dairy Farmers of America and Dairylea Cooperative Inc. (DFA/DLC) also testified in opposition to the adoption of Proposals 8 and 9. The witness stated that adoption of these proposals would allow more products to be classified as Class II products even though they compete with fluid milk for sales. A post-hearing brief filed by DFA/DLC further claimed that the growth of drinkable yogurt products in the marketplace has not been impeded by previous classification decisions and that such products should not be excluded from the fluid milk product definition because some hearing participants claimed it would harm the innovation of new dairy products.

In its comments to the Recommended Decision, Select Milk Producers, Inc. (Select)/Continental Dairy Products (Continental) opposed the exemption of kefir or drinkable yogurt beverages that contained 20 percent or more yogurt from the fluid milk product definition. According to their brief Select and Continental are dairy-farmer owned cooperatives that market milk on various Federal orders.

The witness appearing on behalf of Leprino testified in support of Proposal 10. The witness testified that only products that compete with fluid milk should be classified as fluid milk products, therefore meal replacements and nutritional drinks should remain exempted from the fluid milk product definition. In its exceptions to the Recommended Decision Leprino opposed the inclusion of the term "health care industry" in the meal replacement exemption. Leprino argued that this qualifier could cause a product to hold two different classifications depending on how it is distributed.

A post-hearing brief submitted on behalf of Novartis stated that the Department should exempt special dietary need and nutritional beverages from the fluid milk product definition. The brief explained that Novartis' products are not currently classified as fluid milk products due to their nutritional nature, the level of nonfat milk solids contained in their product, and because their products are only available through foodservice and health care channels. The brief stressed that Novartis' health care products were never intended to compete with traditional fluid milk.

The brief predicted that Novartis' products could possibly become reclassified as fluid milk products if a 2.25 percent protein standard were adopted as a part of the definition. The

brief insisted that if these products are reclassified, it would result in higher costs for patients with special dietary and nutrition needs. The brief urged the Department to exempt nutritional products consumed for special dietary use from the fluid milk product definition if a protein standard was adopted as part of the fluid milk product definition.

A witness appearing on behalf of Hormel testified in support of Proposal 11 seeking to exclude health care beverages from the fluid milk product definition. The witness testified that fluid milk products designed for the health care industry should be exempted because they do not compete with fluid milk for sales. The witness explained that Hormel's distribution is primarily to health care facilities, and they are targeted to a small segment of the population. The witness argued that if products designed for the health care industry were classified as fluid milk products, it would have no effect on producer revenue because the products have extremely limited distribution. The witness explained that many products Hormel manufactures are designed to help counter the effects of malnutrition in adults with a variety of medical conditions and are not marketed nor labeled as fluid milk. Instead, those products are considered to be foods for special dietary use, the witness noted, and should be exempt from the fluid milk product definition.

The Bravo!, *et al.,* witness also testified in support of the continued exemption from the fluid milk product definition for products such as infant formula, meal replacements, products packaged in hermetically sealed containers, snack replacements, high protein drinks, and products that contain alcohol or are formulated for animal use. The witness explained that meal replacements and similar products have historically been exempted from the fluid milk product definition and that their regulatory status should not be changed.

Comments received from Bravo!, *et al.* on the Recommended Decision supported the continued exemption of meal replacements that are sold to the health care industry but offered a slight modification to clarify the intent of the exemption. Bravo!, *et al.,* explained that some products are considered meal replacements and are sold both in retail markets and through health care professionals, health care institutions, and weight management centers. Bravo!, *et al.,* asserted that a literal reading of the Recommended Decision could lead to one product holding two different classifications depending on how it is distributed. Therefore, Bravo!, *et al.,* suggested that the meal replacement exemption be modified to read "* * * (meal replacement) that are intended for use in the health care industry, or products similar in form and intended use sold to retail customers * * *"

The NMPF witness testified in opposition to Proposal 10 arguing that its adoption would eliminate important factors in determining if a product was specially formulated for a specific dietary purpose that would warrant exemption from the fluid milk product definition. The witness was also opposed to Proposal 11 because the proposed language—"nutrient enhanced fortified formulas"—was too broad and would not clearly distinguish such products from traditional fluid milk products.

In its exceptions to the Recommended Decision, NMPF opposed any amendments to the exemption of meal replacements from the fluid milk product definition. NMPF stated that the proposed use of the "health care industry" distribution criteria was vague and open-ended for interpretation on which entities are a part of the "health care industry." NMPF was of the opinion that the current packaging criteria contained in the proposed meal replacement exemption is an appropriate guideline for what products constitute meal replacements.

The DFA/DLC witness testified in opposition to Proposals 10 and 11. The witness was of the opinion that amending the fluid milk product definition to broaden the exemption of products such as infant formulas and meal replacements was not justified because doing so would significantly lower Class I use. This position was reiterated in the DFA/DLC post-hearing brief and exceptions to the Recommended Decision. DFA, *et al.,* argued that no evidence was presented to support the removal of the packaging criteria from the meal replacement exemption. The exceptions asserted that the use of packaging criteria has historically been a way to distinguish products that do not compete with fluid milk because the higher cost of hermetically sealed packaging discouraged manufacturers from using the exemption to circumvent Class I pricing. DFA, *et al.,* also took exception to the proposed exemption of nutritional formulas that are prepared for the health care industry. According to the exceptions, the types of institutions that comprise the "health care industry" are not clearly defined in the decision. DFA, *et al.,* asserted that the meal replacement exemption could cause manufacturers to sell their products to a health care facility for resale in the "normal marketplace" to avoid Class I pricing.

The witness appearing on behalf of O–AT–KA testified that products packaged in hermetically-sealed containers or that are specialized for longer shelf life should remain exempt from fluid milk product classification because those products are used as meal replacements and meal supplements, not as alternatives to milk. The witness said that since the term "meal replacement" is not defined in the current definition, no change in the exemption of hermetically sealed containers should be made. The position was reiterated in their brief.

The Dannon witness testified in opposition to the adoption of Proposal 10 because it would remove the 6.5 percent nonfat milk solids standard of the fluid milk product definition.

Exceptions to the Recommended Decision filed by Fonterra opposed the removal of how a product is packaged in the infant feeding and dietary use exemption, and the proposed distribution to the "health care industry" as a method for exempting meal replacements. Fonterra argued that relying on how a product is distributed could cause the same product to hold two separate classifications. Fonterra offered that if meal replacements are to be exempt from fluid milk product classification, then how a product is distributed should not be a factor in determining whether or not it meets the fluid milk product definition.

Discussion and Findings

This decision provides that the fluid milk product definition for all Federal orders defines fluid milk products by: (1) Continuing to provide a non-exhaustive list of named fluid milk products; (2) Maintaining a set of compositional standards; and (3) Continuing to provide exceptions for products that will be exempted from the definition. This decision maintains the current maximum butterfat limit of less than nine percent for a product to still be considered a fluid milk product. The nonfat solids compositional standards will consist of the current 6.5 percent nonfat milk solids content of a product and a true milk protein standard of 2.25 percent content of a product. The nonfat solids standards will be applied independently of each other. For example, if a product contained 6 percent nonfat solids and 2.30 percent true milk protein and less than 9 percent butterfat the product would be considered a fluid milk product. These standards either 6.5 percent or more nonfat milk solids or 2.25 percent or

more true milk protein, or less than nine percent butterfat, will be the basis for determining if a beverage containing dairy ingredients meets the compositional standards for being defined as a fluid milk product.

The calculation of the percent true protein and the percent nonfat milk solids contained in a product will be performed by measuring the true protein and nonfat milk solids of all dairy-derived ingredients contained in the finished product. All non-fluid dairy-derived ingredients used in a fluid milk product will be classified and priced in the same manner as nonfat dry milk (or condensed) is currently classified and priced when used in a fluid milk product.

The record supports exemption of certain drinkable products made from milk or products containing milk-derived ingredients from the fluid milk product definition. These exemptions include: Drinkable yogurt containing at least 20 percent yogurt by weight and kefir; products especially prepared for infant feeding or dietary use as meal replacements that are packaged in hermetically sealed containers; and other products that may otherwise meet the compositional standards of a fluid milk product but contain no fluid milk products named in the fluid milk product definition.

The primary goal of Federal milk marketing orders is to establish and maintain orderly marketing conditions. This is achieved primarily through the use of classified pricing (pricing milk based on its use) and the marketwide pooling of the proceeds of milk used in a marketing area among all producers. These two tools enable Federal orders to establish minimum prices that handlers must pay for milk based on its ultimate use and return to producers a weighted average or uniform price for their milk.

Through classified pricing and marketwide pooling, Federal orders promote and maintain orderly marketing by equitably pricing milk used in the same class among competing handlers within a marketing area. This does not mean that handlers will necessarily have equal costs since differences in milk tests, procurement costs, and transportation will impact a handler's final raw milk costs. However, it does allow handlers to have the same minimum regulated price for milk used in a particular category of products or class of products for which they compete for sales. The regulated minimum price is the class price for the respective class of use. Thus, it is reasonable and appropriate that milk used in identical or nearly identical products should be placed in the same class of use. This tends to reduce the incidence of disorderly marketing that may arise because of price differences between competing handlers.

Federal milk orders classify producer milk as fluid milk or used to produce a manufactured product. Producer milk classified as Class I consists of those products that are intended to be used as beverages including, but not limited to, whole milk, skim milk, low fat milk, and flavored milk products such as chocolate milk. Producer milk classified as Class II includes milk used in the production of soft or spoonable manufactured products such as sour cream, ice cream, cottage cheese, yogurt, and milk that is used as ingredients in the manufacture of other food products. Producer milk classified as Class III includes milk used in the production of hard cheese products. The Class IV use of producer milk generally consists of milk used in the production of canned milk, dried milk products, and butter.

Federal orders provide a definition for "fluid milk products" to identify the types of products that are intended to be consumed as beverages and to specify that the skim milk and butterfat in these types of milk products should be classified as Class I and priced accordingly. The current fluid milk product definition contained in all Federal milk orders provides a non-exhaustive list of products that are specifically identified as fluid milk products. The definition also specifies certain compositional criteria for fluid milk products—any product containing less than 9 percent butterfat and 6.5 percent or more nonfat milk solids. The definition also specifically exempts from the fluid milk product definition products especially prepared for infant feeding or dietary use (meal replacement) packaged in a hermetically-sealed container, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey.

Numerous witnesses were concerned that the definition of milk as defined by the Food and Drug Administration (FDA) in 21 CFR 131.110 not be changed. A Federal milk marketing order decision cannot change the definition of milk. Some witnesses were of the opinion that the addition of various ingredients to milk would cause the resulting product to not meet the Grade A standard. This decision does amend the definition of a fluid milk product in all milk marketing orders for the purpose of classifying producer milk in accordance with the form in which or the purpose for which it is used as required by section 608(c)(5)(A) of the Agricultural Marketing Agreement Act. Neither this decision nor Federal orders in general determine if milk is Grade A or what ingredients are allowed in milk. Further, Federal orders do not establish standards of identity for milk. Such standards are established by other agencies, such as a state board of health or the FDA.

Testimony given at the hearing and positions taken in post-hearing briefs extensively discussed the importance of form and intended use in determining whether a product should be defined as a fluid milk product. However, comments to the Recommended Decision almost universally favored the use of specific compositional standards rather than form and use as first consideration which was proposed in the Recommended Decision. These comments have merit. Therefore as provided in this decision, compositional criteria will be the primary basis used in determining whether the product is defined as a fluid milk product.

The standards of 6.5 percent or more nonfat milk solids or 2.25 percent or more true milk protein are intended to exclude from the fluid milk product definition those products which contain some milk solids but that are not closely identified with the dairy industry.

The establishment of nonfat milk solids and true milk protein standards for classifying milk products is intended to provide the same classification for products having the same general form and use. Similar products in different classes defeat the purpose of classified pricing and results in unequal costs among handlers. It is not the intent of the Federal order program to bring products that do not resemble nor are marketed as dairy beverages under the fluid milk product definition. As stated earlier, the Act requires the Secretary to classify milk "in accordance with the form in which or the purpose for which it is used." Currently, some products such as re-hydrating fruit flavored sport drinks, bottled teas, carbonated soft drinks, or bottled water may contain some milk-derived ingredients but they do not resemble nor are they marketed as dairy products.

As discussed in the comments to the Recommended Decision, specific compositional standards will give the industry clearer standards from which to determine if a product is or will be defined as a fluid milk product, superseding reliance on form and intended use. When formulating new beverage products, the industry will have specific standards to guide product formulation. The industry will better know how Federal orders will determine the prices of milk ingredients.

Based on record evidence, compositional standards should continue to be relied upon in determining if a product meets the fluid milk product definition. The revised definition provides that a beverage should contain by weight less than 9 percent butterfat and contain 6.5 percent or more nonfat milk solids or 2.25 percent or more true milk protein. The 9 percent butterfat criterion that is currently used as the maximum butterfat content to differentiate between fluid milk products and fluid cream products (a Class II use of milk) is unchanged. The addition of a 2.25 percent true milk protein criterion serves to provide a sufficient basis to distinguish whether a product is a Class I or Class II use of milk.

Several parties filed comments in opposition to the inclusion of the 2.25 percent true milk protein criterion. They argued that its inclusion in the definition is unnecessary and its adoption may cause processors to use non-dairy ingredients to avoid products from being classified as a fluid milk product.

The record of this proceeding clearly supports the addition of a milk protein standard to the fluid milk product definition. The record shows that by removing some of the lactose from milk, a product may be produced that is in all respects (except for the removed lactose) identical to the form and intended use of fluid milk products. However, using only the 6.5 percent nonfat standard results in this product being classified as Class II even though its form and use closely resembles Class I products.

Including all dairy derived ingredients in the computation of a product's nonfat solids and true protein content provides a more complete and comprehensive basis to determine a milk products identity as a fluid milk product. Record evidence reveals criticism that the current fluid milk product definition has not changed to reflect the technological advances in milk processing—especially the fractionation of milk. Such fractionation technology has created the ability to produce dairy-based beverages of almost any composition, some of which are marketed as and directly compete with traditional fluid milk products.

Several witnesses at the hearing addressed specific composition criterion that should be used for determining if a product meets the fluid milk product definition. Proponents of the 2.25 percent true milk protein criterion explained that with the technology to separate the lactose from the protein in milk, protein also should be used in determining if a product should be a fluid milk product because protein is the highest valued nonfat milk solid and because lactose is most often not used in the formulation of manufactured dairy-based beverages. Under current administrative determination of nonfat milk solids, a dairy-based beverage with lactose removed has generally been determined not to be a fluid milk product. Further, milk, in either wet or dry form, that has lactose removed is generalized as "milk protein concentrate (MPC)" and MPC has not been considered a nonfat milk solid. Thus, with lactose removed, a product closely resembling milk in form and intended use may contain less than the current 6.5 percent nonfat milk solids even though the protein content could exceed the protein content of milk.

Other testimony contended that milk protein is not a significant component in fluid milk products and incorporating a milk protein criterion is therefore not appropriate. Contrary to the view that milk protein is not a significant component in fluid milk products, the record of the proceeding reveals that in whole milk, protein is the third most abundant component following lactose and butterfat. In lowfat milk, protein is the second most abundant component.

Even though the record and post hearing briefs contain considerable discussion concerning possible new product development and substitution of nondairy ingredients in fluid milk products, no evidence was presented at the hearing to indicate at what price level or to what degree such substitution would take place. Testimony at the hearing only speculated that processors may use nondairy ingredients if the fluid milk product definition adopted the proposed 2.25 percent true milk protein compositional standard. Opponents also suggested that evidence did not warrant any change to the fluid milk product definition and that there was no evidence that changing the definition would be beneficial to dairy farmers. Proponent witnesses argued that adoption of a 2.25 percent true milk protein compositional standard would not change the classification of products which currently do not meet the fluid milk product definition. Neither proponents nor opponents presented any data to substantiate their claims of benefit or harm to changing the fluid milk product definition.

While the Class I use of milk is priced on the basis of skim milk and butterfat, skim milk and butterfat pricing do not distinguish the components or the level of components that are in the skim fraction. Even if there is a greater level of protein in the skim fraction, there is no greater value that will be assigned to the skim fraction. However, producers may benefit from products being determined as meeting the fluid milk product definition not because of the adoption of the protein standard but because the dairy ingredients in these products are priced as Class I.

The record evidence supports that the true milk protein or nonfat milk solids contained in a finished product should be used to determine if the 2.25 percent true milk protein or the 6.5 percent nonfat solids compositional standard has been met. The composition of the finished product, including all milk-derived ingredients, will provide a clear comparison of the product in question to the products listed and defined in the fluid milk product definition. These ingredients include, but are not limited to, the specific products listed in the fluid milk definition, nonfat dry milk, milk protein concentrate, casein, calcium and sodium caseinate, and whey. Although liquid whey, which is derived from other manufacturing, may meet the compositional standards of a fluid milk product in its natural form, it is not a finished product. The intent is to specifically exclude liquid whey from the fluid milk product definition and account for it only when used as an ingredient in the production of a finished product meeting the fluid milk product definition. The compositional content will be computed by using the pounds of true protein or nonfat milk solids in the finished product. For all other purposes, such as pricing and pooling, the fluid equivalent of all milk ingredients in fluid milk products, including but not limited to nonfat dry milk, milk protein concentrate, casein, calcium and sodium caseinate, and whey, will be used. The addition of a true milk protein criterion will assist in determining those products that should be considered fluid milk products. The inclusion of a true milk protein compositional standard also will assure that products which are comparable to the products listed in the fluid milk product definition are properly classified as Class I.

Federal milk orders have consistently been applied to provide and this decision reaffirms that nonfat dry milk reconstituted to make a fluid milk product or the volume increase caused by the use of nonfat dry milk in the fortification of a fluid milk product should be assessed the Class I value because the integrity of classified pricing is maintained and the reconstituted or fortified product competes with fluid uses of milk products. Accordingly, this decision proposes that other dairy-derived ingredients, such as milk protein

concentrate, casein, calcium and sodium caseinate, and whey, that are used or reconstituted to form a fluid milk product or the volume increase caused by the use of these products to fortify a fluid milk product be priced as Class I for the same reasons. Handlers will be charged the current month's Class I price for the additional Class I volume resulting from the use of these ingredients in fluid milk products contrasted to the receipt of these products assigned to Class IV. This reclassification charge (additional cost) is not a separate charge but is assessed through the increase in the handler's Class I utilization and is assessed (determined) on the volume of reconstituted milk or the volume increase in the modified product, above the level of an unmodified product. This reclassification charge assures equity between competing handlers on raw product cost, assures producers that they will receive the Class I value contribution to a marketing order's blend price for milk marketed as a fluid milk product, and it maintains the integrity of classified pricing.

Based on the record, all milk-derived ingredients, on a fluid equivalent basis, contained in a fluid milk product will be included in the allocation process and the resulting classification and pricing of producer milk. Whey, as used herein is intended to include whey, dry whey, and whey protein concentrates. The fluid equivalent for those products where the relationship between the protein and nonfat milk solids has not been altered will be computed using nonfat solids, while the fluid equivalent for those products where the relationship between the protein and nonfat milk solids has been altered, such as MPCs, will be determined on a true milk protein basis.

The methodology for computing a handler's cost under Federal milk orders remains unchanged. Milk-derived products such as nonfat dry milk, MPC, casein, calcium and sodium caseinates and whey will be used to determine if the quantity of the fluid milk equivalent in the modified fluid milk product is greater than the volume of an unmodified fluid milk product of the same type and butterfat content. The equivalent volume of the modified product, up to the level of the volume of an unmodified product, will be considered Class I utilization and will result in the inherent reclassification charge (additional cost) in the handler's use value from the Class IV price to the Class I price. Any fluid milk equivalent in excess of this equivalent volume will be considered a utilization of other source milk beginning with Class IV and be priced accordingly. The receipt of these milk-derived products used in a fluid milk product will be accounted for on a fluid equivalent basis as Class IV other source receipts.

Comments filed in response to the Recommended Decision, by various parties representing producers, were in favor of including all nonfat dairy solids in the computation of the numerical standards as contained in the Recommended Decision. Their comments reiterated the position presented in their testimony and briefs. Comments filed by opponents of including all nonfat milk solids argued that the inclusion of all nonfat solids is unnecessary because whey and certain other nonfat solids have not traditionally been included in the definition of fluid milk. They also maintain that because no disorderly marketing has occurred, no change is necessary. Opponents assert that the inclusion of all nonfat dairy solids would capture additional products meeting the fluid milk definition and in turn processors would substitute nondairy solids to avoid classification as a fluid milk product.

As record evidence supports and as already discussed in this decision, the inclusion of all milk-derived ingredients in the computation of the nonfat solids on true protein content is appropriate. The use of all milk-derived ingredients used in the manufacturing of the fluid milk product provides a more complete basis for comparing the product to the listed fluid milk products and a clearer indication of the appropriate determination of classification. In addition, considering all milk-derived ingredients places all current and future products on the same set of compositional standards.

Opponents maintain that nondairy products will be substituted to avoid a product being determined to be a fluid milk product. However, opponents did not present evidence as to the relative prices necessary for this substitution to occur. Opponents did not quantify any of their claims that the recommended decision would cause product substitution in the manufacture of dairy based beverages. Nor did they present any examples of dairy ingredient substitution. Therefore, it is virtually impossible to determine if substitution will occur and what the impact, if any, may be. While there are currently several nondairy ingredient options available to formulate products, the advantages of using dairy ingredients, such as their nutrition, physical properties, and taste, have kept dairy ingredients as a competitive choice for use in the manufacture of the many new products currently available.

Manufacturers of milk-based products that are intended to be used for dietary uses (meal replacements) testified that products sold for such dietary use in hermetically-sealed containers and the same product sold in other types of containers receive different regulatory classifications. Some products, such as those intended to be used for infant feeding and dietary needs (meal replacements), are currently considered Class II products if they are hermetically-sealed. However, the same products in a brick-pack or other types of packaging may be considered fluid milk products. The record evidence indicates that these products have a limited distribution and in the case of many of the dietary products, sales are only to health care facilities (such as hospitals and nursing homes). In addition, these products have a very long shelf life. The limited distribution and packaging of these products indicates that they do not directly compete with Class I products. Their intended use can be generalized as replacements for meals by infants, the infirm, and the elderly and not for use as a beverage. These products as used for medical and well-defined healthcare applications are not fluid milk competitors and are not of a scale, as record evidence demonstrates, that would cause a change in marketing conditions for fluid milk products. Accordingly, the term "meal replacement" encompasses both those drinkable dairy products intended to replace meals and categorized products intended for the health care industry, and may include other products of similar intended form and use.

This decision, in the narrow context of a highly specialized and marketed drinkable product sold to the health care industry, continues to find that packaging is a legitimate criterion for considering some meal replacement products as Class II products and others as Class I. When dietary products (meal replacements) are in hermetically sealed containers such packaging confirms that their intended use is a meal replacement. When not so packaged, dietary products (meal replacements) may or may not be used to replace the nutrition of normal meals in the health care industry or possibly to be used in the same manner as fluid milk. The dietary products packaged in other than hermetically sealed containers may or may not have the same form and intended use as those in hermetically sealed containers. It is therefore not reasonable that they should automatically be similarly classified.

Dietary products (meal replacements) should be excluded from the fluid milk product definition and should be considered Class II products if they are packaged in hermetically sealed containers or if it is demonstrated otherwise that the intended use is for specialized health care purposes or medically required meal substitution.

Based on the record, the products in question have been produced to help consumers with various dietary or digestive problems achieve sufficient nutritional intake through a drinkable alternative to solid foods. These products traditionally have added vitamins, minerals, and proteins to achieve a nutritional equivalent to a "typical" meal. In addition, these products are packaged in hermetically sealed containers to maintain a long shelf life for easy handling in nursing homes and hospitals. These products continue to be Class II products. Similar meal replacement products not packaged in hermetically sealed containers (brick packs or gable topped containers) should be considered as Class II products regardless of where they are marketed if they can be shown to be intended for the same specialized dietary use as a product sold in a hermetically sealed container with the same limited use. However, fortified milk products not intended for dietary use (meal replacements) that are available for a more generalized use that would broadly compete with fluid milk will not be exempted from the fluid milk product definition.

Numerous comments and exceptions were filed in response to the Recommended Decision that are in opposition to the elimination of packaging and the addition of "sold to the health care industry" as criteria for excluding milk based dietary use (meal replacement) products from the definition of a fluid milk product. Much of the opposition concerned the definition of "sold to the health care industry" and the application of such a criteria. Several comments suggested that products sold to retail stores might be classified differently than products sold to nursing homes or hospitals. Based on the evidence presented in exceptions, this decision removes the distribution channel reference in the fluid milk product definition to prevent the potential dual classification of a product.

As noted by DFA, *et al.,* in its exceptions to the Recommended Decision, USDA did not receive any proposals to change the classification of supplements for dietary use that contain milk-derived ingredients such as ready-to-drink high protein products. Beverages containing milk-derived ingredients, such as high protein drinks, are typically packaged in hermetically sealed containers and are currently classified as Class II products. Such beverages may include fruit flavored re-hydrating sports drinks, bottled teas, carbonated soft drinks and bottled waters which may contain milk-derived ingredients, usually in the form of whey proteins. Because this final decision provides for primary reliance on compositional standards rather than on intended form and use, products such as these need to be specifically exempted from the fluid milk product definition even if they otherwise meet the definition's compositional standards. Such products are clearly not the same as other named fluid milk products of the definition and are not used in a manner consistent with beverage milk. These products may often be used to supplement nutritional needs, but are not used or considered to be a meal replacement. Such products, packaged in hermetically sealed containers, will be exempted from the fluid milk product definition.

Exceptions to the Recommended Decision assert that expanding exemptions of products from the fluid milk product definition would result in lower producer revenue. The record of this proceeding lacks the data to conclude that exempting certain milk-based or milk containing products, or reclassifying current products from one class to another, will harm producer revenue.

Proposal 5 called for, in part, retaining the 6.5 percent nonfat solids criterion and giving the Department the flexibility to include other dairy-based products that fell below 6.5 percent nonfat solids as fluid milk products. At the hearing, the proposal was modified to require the Department to first make other determinations and to conduct studies before a classification determination is made on whether the product meets the fluid milk product definition.

Specifically, the modified proposal would require the Department to determine if a product competes directly and substantially with Food and Drug Administration defined milk products and also included five other criteria the Department would have to satisfy before a written determination of fluid milk product classification could be issued. The modified proposal further required that more than three million pounds of the product be sold in a marketing area per month before the product would be defined as a fluid milk product even if the product met all of the five criteria.

The multi-criteria features of Proposal 5, as modified, are not consistent with the adopted primary consideration to compositional standards and the requirement to classify milk on the basis of form and intended use as provided for in section 608(c)(5)(A) of the Act and are not adopted. Requiring a comparison of retail prices and advertising, and examination of the substitutability between the new product and already defined fluid milk products does not conform to the primary reliance on compositional standards or form and intended use in determining whether a product meets the fluid milk product definition. No significant improvements to product classification determinations would be achieved. Therefore Proposal 5 is denied.

A modification to Proposal 7 made at the hearing is not adopted. This modification sought to require the Department to hold a hearing to determine the classification of a new product "made by new technology." Such requirement is not necessary for the same reasons in determining that Proposal 5 and all of its modifications are not adopted. The need to incorporate a specific requirement to hold a hearing is not necessary since it is already available.

A number of opponents of proposals seeking to change the fluid milk product definition argued that there must necessarily exist a current problem or the existence of disorderly marketing conditions before amendments to the provisions of Federal milk marketing orders can be made. Based on the evidence, this decision disagrees with such arguments. Actions to preserve the integrity of the regulatory system have historically been taken to avoid problems with the goal of maintaining orderly marketing conditions. Amending the orders to prevent disorderly marketing conditions from arising is reasonable and consistent with ensuring and maintaining orderly conditions and equity among producers and handlers. In light of the changing marketing conditions, it is especially reasonable and appropriate to provide standards that can address both immediate and future needs of a rapidly changing industry brought about by new technology.

Some witnesses testified that even if a product meets the fluid milk product definition, the intended use of that product should be considered for assigning the product to the most appropriate class use. In this regard, if the intended use of the product is a food item that does not compete with traditional fluid milk in the marketplace, the product should be

exempted from the fluid milk product definition. The most notable products of this characteristic are drinkable yogurts that, while drinkable, are not intended to be used as a beverage. The record reveals that some products such as drinkable yogurts are marketed as a food item to supplement or even replace a meal and intended to be used as a quick and easy way to carry a snack. This differentiates their intended use from fluid milk products consumed as beverages. The record indicates that these products are not marketed side-by-side with fluid milk products in retail outlets. Instead, they are positioned alongside other Class II products such as spoonable yogurts in cups. It is reasonable to conclude that drinkable yogurts are yogurt in fluid form and not flavored drinks and are sufficiently different in intended use from other fluid milk products to warrant their exemption from the fluid milk product definition.

A portion of Proposal 9 referred to drinkable yogurt having a protein standard of "* * * no more than 2.2 percent skim milk protein * * *" given that it contained a minimum amount (20 percent) of yogurt. As just discussed above, several witnesses testified to the fact, and the consumer surveys and marketplace data provided by Dannon and General Mills explained how yogurt containing products (*e.g.* drinkable yogurt) are fundamentally different from fluid milk. No protein standard is adopted for drinkable yogurt because the 20 percent yogurt content requirement differentiates these products and assures they are not in competition with fluid milk.

Nevertheless, it is reasonable to establish a minimum level of yogurt that needs to be contained in the finished product to differentiate them from flavored beverages while at the same time identifying the drinkable yogurt as a yogurt product. No record evidence was presented by manufacturers of yogurt-containing beverages to demonstrate that a 20 percent minimum yogurt standard would cause some yogurt beverages to be classified as fluid milk products and others not. Therefore based on record evidence, it is reasonable to estimate that the current yogurt content of these products is above the proposed 20 percent minimum.

Accordingly, drinkable yogurt containing at least 20 percent yogurt by weight should be considered a yogurt product and as such exempt from the fluid milk product definition. The yogurt contained in exempted drinkable yogurt still must meet the yogurt, low-fat yogurt, or fat-free yogurt standard of identity as defined by the FDA (21 CFR 131.200–131.206) and the manufacture of the yogurt mass must be an identifiable and quantifiable step in the formulation process of the drinkable yogurt.

Opponents of excluding drinkable yogurts from the fluid milk product definition stressed that drinkable yogurts should not be excluded because they are beverages and packaged similarly to other fluid milk products. Opponents are of the opinion that drinkable yogurts are fluid milk products because they are comparable to flavored or cultured fluid milk products. Drinkable yogurts do have several characteristics similar to listed fluid milk products—they can be used as a beverage and are similarly packaged. There are, however, other characteristics that differentiate drinkable yogurts from fluid milk products, as the record indicates. These characteristics include, in most cases, a different consistency than the fluid milk products, a significant volume of added yogurt, the addition of fruit and not just flavorings, and live and active cultures supplied by the yogurt.

The differences between listed fluid milk products and drinkable yogurts warrant the exclusion of drinkable yogurts containing at least 20 percent yogurt from being defined as a fluid milk product. Drinkable products with less than 20 percent yogurt will be considered fluid milk products. The milk ingredients (including the yogurt portion) contained in those products with less than 20 percent yogurt will be priced at the Class I price. The Recommended Decision proposed the yogurt portion of these Class I products not be subject to a Class I "upcharge." Fonterra's exceptions objected to the yogurt content not being priced as Class I as would other milk ingredients in the fluid milk product. Since these beverages with less than 20 percent yogurt will be considered a fluid milk product, it is consistent to price the milk ingredients in such products the same as other Class I beverages.

Bravo!, *et al.,* which supported excluding drinkable yogurts from the fluid milk product definition, proposed, as did Lifeway Foods separately at the hearing, to also exclude kefir. The evidence provided to support excluding kefir from the fluid milk product definition identified kefir as a cultured product similar to drinkable yogurt that, like yogurt, contains live and active cultures. While cultured beverages are one of the listed products in the fluid milk product definition, the record shows kefir's several similarities to drinkable yogurts provide a reasonable basis to conclude that the milk used in kefir products should be classified in the same way as milk used in drinkable yogurt products. NMPF argued that kefir should not be exempt because no standard of identity exists to identify what is and is not kefir. While kefir has no standard of identity, cultured milk requirements are described by the U.S. Food and Drug Administration (FDA) (21 CFR 131.112) and kefir is specifically listed as such a product. Therefore, as with drinkable yogurts containing at least 20 percent yogurt by weight, kefir should be exempt from the fluid milk product definition.

Producer groups were concerned about the Recommended Decision's effect on producer income. The exclusion of certain drinkable yogurts and kefir from the fluid milk product definition will have a minimal impact on the resulting uniform prices to producers. According to the record the volume of drinkable yogurt or kefir type beverages was less than one-half of one percent of the packaged fluid milk products distributed in 2004. For 2004, it is estimated that if all of the current drinkable yogurt and kefir beverages had been Class II, the impact on producers, either through the uniform price or producer price differential, would have been a $0.0026 per hundredweight reduction on the more than 103 billion pounds of producer milk pooled on Federal orders.

NMPF argued that the form and use of drinkable yogurt is the same as the products listed in the fluid milk products definition. It could be asserted that drinkable yogurt is a beverage similar to some of the listed fluid milk products and it is made in this form with the intention of people drinking the product. However, the similarity ends there and the record evidence establishes numerous differences which support drinkable yogurt and kefir to not be treated as fluid milk products. As pointed out in the Recommended Decision and by proponents of both Proposals 8 and 9 in their comments, drinkable yogurt is marketed with yogurt and competes with yogurt products in the marketplace and not with fluid milk products. As indicated by a proponent for exempting drinkable yogurt from the fluid milk product definition, it is made by blending yogurt into a liquid. This is significantly different from flavored drinks in which flavoring is added to a fluid milk product. As a practical point, drinkable yogurts do not fulfill the same intended use as fluid milk products in the home or commercially. For example, they are not intended to be added to tea or coffee, or poured on cereals, fruits and

other foods, and to be consumed as a beverage.

NMPF, in their exceptions to the Recommended Decision, pointed out that the FDA may change the standard of identity of yogurt and therefore it is inappropriate to use the current FDA standard of identity as a criterion in determining that drinkable yogurt which contains more than 20 percent yogurt is not a fluid milk product. NMPF exceptions also opposed the exemption of kefir from the fluid milk product definition for many of the same reasons for exempting drinkable yogurt. As NMPF correctly notes, kefir is a cultured fermented beverage. A cultured fermented beverage such as kefir is equally dissimilar to the other listed fluid milk products as these described drinkable yogurts.

After careful review and consideration of the record evidence and the reasons as stated above, this decision concludes that drinkable yogurt containing at least 20 percent yogurt by weight, and kefir should not be defined as fluid milk products. As such, this determination represents the adoption of Proposal 8, the requirement that drinkable yogurt products contain at least 20 percent yogurt by weight to be excluded from the fluid milk product definition as included in Proposal 9, and the proposal of Bravo!, *et al.,* as well as Lifeway Foods that kefir be exempt from the fluid milk product definition. Milk used to produce these products will be classified as a Class II use of milk.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents: A Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the Northeast and other marketing areas, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register.**

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referenda be conducted and completed on or before the 30th day from the date this decision is published in the **Federal Register,** in accordance with the procedures for the conduct of referenda [7 CFR 900.300–311], to determine whether the issuance of the orders as amended and hereby proposed to be amended, regulating the handling of milk in the Northeast, Appalachian, Florida, Southeast, Upper Midwest, Central, Mideast, Pacific Northwest, Southwest and Arizona marketing areas is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be June 2009.

The agents of the Secretary of Agriculture to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

This order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the marketing agreements and the orders as hereby amended, are in the current of interstate commerce in milk or its products.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

For the reasons set forth in the preamble, 7 CFR part 1000 is proposed to be amended as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. The authority citation for 7 CFR Part 1000 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

2. In § 1000.15 paragraphs (a) and (b)(1) are revised to read as follows:

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* shall mean any milk products in fluid or frozen form that are intended to be used as beverages containing less than 9 percent butterfat and 6.5 percent or more nonfat solids or 2.25 percent or more true milk protein. Sources of such nonfat solids/protein include but are not limited to: Casein, whey protein concentrate, milk protein concentrate, dry whey, caseinates, lactose, and any similar dairy derived ingredient. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added or reduced nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) * * *

(1) Any product that contains less than 6.5 percent nonfat milk solids or contains less than 2.25 percent true milk protein; whey; plain or sweetened evaporated milk/skim milk; sweetened condensed milk/skim milk; yogurt containing beverages with 20 or more percent yogurt by weight and kefir; products especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers; and products that meet the compositional standards specified in paragraph (a) of this section but contain no fluid milk products included in paragraph (a) of this section.

* * * * *

3. In § 1000.40 paragraphs (b)(2)(iii) and (b)(2)(vi) are revised to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(b) * * *

(2) * * *

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items; yogurt, including yogurt containing beverages with 20 percent or more yogurt by weight and kefir, and any other semi-solid product resembling a Class II product;

* * * * *

(vi) Products especially prepared for infant feeding or dietary use (meal replacements) that are packaged in hermetically sealed containers and products that meet the compositional standards of § 1000.15(a) but contain no fluid milk products included in § 1000.15(a);

* * * * *

4. In § 1000.43 paragraph (c) is revised to read as follows:

§ 1000.43 General classification rules.

* * * * *

(c) If any of the water but none of the nonfat solids contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids. If any of the nonfat solids contained in the milk from which a product is made are removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water and nonfat solids originally associated with such solids determined on a protein equivalent basis.

* * * * *

Note: The following will not appear in the Code of Federal Regulations.

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § _____ to _____ [1] all inclusive, of the order regulating the handling of milk in the _____ [2] marketing area (7 CFR part _____ [3]); and

II. The following provisions:

§ _____ [4] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ [5], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy

[1] First and last section of order.

[2] Name of order.

[3] Appropriate part number.

[4] Next consecutive section number.

[5] Appropriate representative period for the order.

Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest _____

Dated: May 21, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–12771 Filed 6–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE307; Notice No. 23–10–01–SC]

Special Conditions: AeroMech, Incorporated; Hawker Beechcraft Corporation, Model B200 and Other Aircraft Listed in Table 1, Approved Model List (AML); Installation of MD835 Lithium Ion Battery

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the AeroMech, Incorporated; Hawker Beechcraft Corporation, model B200 and other part 23 aircraft listed on the AML. These airplanes as modified by AeroMech, Incorporated will have a novel or unusual design feature(s) associated with installation of the Mid-Continent Instruments MD835 Lithium Ion (Li-ion) battery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by July 14, 2010.

ADDRESSES: Mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, 901 Locust, Room 506, Kansas City, Missouri 64106. You may deliver two copies to the Small Airplane Directorate at the above address. Mark your comments: Docket No. CE307. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: James Brady, Regulations and Policy Branch, ACE–111, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, MO 64106; telephone (816) 329–4132; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested persons to submit written data, views, or arguments as they desire. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 18, 2009, AeroMech, Incorporated applied for a supplemental type certificate AML for installation of the Mid-Continent Instruments MD835 Li-ion battery in the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML. The AML covers part 23 aircraft that currently use the PS–835 lead-acid emergency battery.

The current regulatory requirements for part 23 airplanes do not contain adequate requirements for the application of Li-ion batteries in airborne applications. AeroMech, Incorporated proposes to replace an existing L–3 Communications PS–835 lead-acid emergency battery with a Mid-Continent Instruments MD835 Li-ion battery on part 23 aircraft currently equipped with the PS–835 battery. This type of battery possesses certain failure, operational, and maintenance characteristics that differ significantly from that of the nickel cadmium (Ni-Cd) and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes.

Type Certification Basis

Under the provisions of § 21.101, AeroMech, Incorporated must show that the Hawker Beechcraft Corporation B200 and other aircraft listed on the AML continue to meet the applicable provisions of the regulations incorporated by reference in the type certificate of each model listed and the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for each model qualified for this modification is detailed below.

TABLE 1—APPROVED MODEL LIST

Aircraft make	Aircraft model	TCDS	Certification basis for alteration
Aero Vodochody	Ae 270	A58CE Rev 3	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Cessna	441	A28CE	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.

TABLE 1—APPROVED MODEL LIST—Continued

Aircraft make	Aircraft model	TCDS	Certification basis for alteration
Cessna	401, 402, 411, 414, 421, 425	A7CE	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Cessna	501, 551	A27CE Rev 17	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Cessna	525, 525A, 525B,	A1WI Rev 17	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Cessna	510	A00014WI Rev 3	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Dornier	228–100/–101/–200/–201/–202/–212	A16EU	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Embraer	EMB–500	A59CE Rev 0	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Embraer	EMB–110P1, EMB110P2	A21SO Rev 6	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Hawker Beechcraft	C90, C90A, C90GT, B90, E90, H90, C90GTi	3A20 Rev 69	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Hawker Beechcraft	200, 200C, 200CT, 200T, B200, B200C, B200CT, B200GT, B200CGT B200T, 300, 300LW, B300, B300C, 1900C, 1900D.	A24CE Rev 98	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Hawker Beechcraft	99, 99A, A99, A99A, B99, C99	A14CE Rev 37	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Hawker Beechcraft	390	A00010WI Rev 8	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Learjet	23	A5CE Rev 10	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
M7 Aerospace	SA226-T, SA226-AT, SA227-AT, SA227-TT	A5SW Rev 26	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Pacific Aerospace	750XL	A50CE Rev 3	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Piaggio	P–180	A59EU Rev 18	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Pilatus	PC–12	A78EU Rev 19	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Socata	TBM 700	A60EU Rev 18	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Twin Commander	680, 680E, 680F, 680FL, 680T, 680V, 680W, 681, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B.	2A4 Rev 47	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.
Viking Air	DHC–6–1/–100/–200/–300	A9EA Rev 13	14 CFR part 23 amdt 23–59, except for 14 CFR 23.1308.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16. The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate AML to modify any other model to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML will incorporate the following novel or unusual design features:

AeroMech, Incorporated proposes to replace an existing L–3 Communications PS–835 lead-acid emergency battery with a Mid-Continent Instruments MD835 Li-ion battery on part 23 aircraft currently equipped with the PS–835 battery. This type of battery possesses certain failure, operational characteristics, and maintenance requirements that differ significantly from that of the Ni-Cd and lead-acid rechargeable batteries currently approved in other normal, utility, acrobatic, and commuter category airplanes.

Discussion

The applicable part 21 and part 23 airworthiness regulations governing the installation of batteries in general aviation airplanes, including § 23.1353 were derived from Civil Air Regulations (CAR 3) as part of the recodification that established 14 CFR part 23. The battery requirements, which were identified as § 23.1353, were basically a rewording of the CAR requirements that did not add any substantive technical requirements. An increase in incidents involving battery fires and failures that accompanied the increased use of Ni-Cd batteries in airplanes resulted in rulemaking activities on the battery requirements for business jet and commuter category airplanes. These regulations were incorporated into § 23.1353(f) and (g), which apply only to Ni-Cd battery installations.

The proposed use of Li-ion batteries on the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML has prompted the FAA to review the adequacy of the existing battery regulations with respect to that chemistry. As the result of this review, the FAA has determined that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of Li-ion batteries that could affect safety of the

battery installation and the reliability of the electrical power supply on the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML.

Li-ion batteries in general are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their Ni-Cd and lead-acid counterparts. This is especially true for overcharging a Li- ion, which will likely result in explosion, fire, or both. Certain types of Li-ion batteries pose a potential safety problem because of the instability and flammability of the organic electrolyte employed by the cells of those batteries. The severity of thermal runaway increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

If the discharge of the cells is below a typical voltage of 3.0 volts on some versions of Li-ion batteries, they will subsequently no longer accept a charge. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status, a problem shared with Ni-Cd batteries.

Unlike Ni-Cd and lead-acid cells, some types of Li-ion cells employ electrolytes that are known to be flammable. This material can serve as a source of fuel for an external fire in the event of a breach of the cell container.

The intent of these special conditions is to establish appropriate airworthiness standards for Li-ion battery installations in the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML. Special conditions also ensure, as required by § 23.601, that these battery installations do not possess hazardous or unreliable design characteristics. These special conditions adopt the following requirements as a means of addressing these concerns:

(1) Inclusion of those sections of § 23.1353 that are applicable to Li-ion batteries.

(2) Inclusion of the flammable fluid fire protection requirements of § 23.863. In the past, this rule was not applied to the batteries of business jet or commuter category airplanes since the electrolytes utilized in lead-acid and Ni-Cd batteries are not considered to be flammable.

(3) Addition of new requirements to address the potential hazards of overcharging and over discharging that are unique to Li-ion battery designs.

(4) Addition of maintenance requirements to ensure that batteries used as spares are maintained in an appropriate state of charge (SOC).

Applicability

As discussed above, these special conditions are applicable to the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML. Should AeroMech, Incorporated apply at a later date for a supplemental type certificate to modify any other model on the AML to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Hawker Beechcraft Corporation, B200 and other aircraft listed on the AeroMech, Incorporated airplanes AML.

The Federal Aviation Administration proposes that the following Special Conditions (SC) be applied to all part 23 airplanes equipped with MD–835 Li-ion batteries in lieu of the requirements of § 23.1353(a), (b), (c), (d), and (e), Amendment 23–49 through 23–59.

SC 23.1353, Storage battery design and installation.

Li-ion batteries and battery installations on part 23 airplanes equipped with existing PS–835 batteries must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any probable charging or discharging condition, or during any failure of the charging or battery monitoring system not shown to be extremely remote. The Li-ion battery installation must be designed to preclude explosion or fire in the event of those failures.

(2) Li-ion batteries must be designed to preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gasses emitted by any Li-ion battery in normal operation or as the result of any failure of the battery charging or monitoring system, or battery installation not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Li-ion batteries that contain flammable fluids must comply with the flammable fluid fire protection requirements of § 23.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any Li-ion battery may damage airplane structure or essential equipment.

(6) Each Li-ion battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Li-ion battery installations must have—

(i) A system to control the charging rate of the battery automatically so as to prevent battery overheating or overcharging, or

(ii) a battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or

(iii) a battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any Li-ion battery installation whose function is required for safe operation of the airplane must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the capacity and state of charge (SOC) of the batteries have fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness (ICA) must contain recommended manufacturer's maintenance and inspection requirements to ensure that batteries, including single cells, meet a safety function level essential to the aircraft's continued airworthiness.

(i) The ICA must contain operating instructions and equipment limitations in an installation maintenance manual.

(ii) The ICA must contain installation procedures and limitations in a maintenance manual sufficient to ensure that cells or batteries, when installed according to the installation procedures, still meet safety functional levels essential to the aircraft's

continued airworthiness. The limitations must identify any unique aspects of the installation.

(iii) The ICA must contain corrective maintenance procedures to functionally check battery capacity at manufacturer's recommended inspection intervals.

(iv) The ICA must contain scheduled servicing information to replace batteries at manufacturer's recommended replacement time.

(v) The ICA must contain maintenance and inspection requirements to visually check for a battery and/or charger degradation.

(10) Batteries in a rotating stock (spares) that have experienced degraded charge retention capability or other damage due to prolonged storage must be functionally checked at manufacturer's recommended inspection intervals.

(11) If the Li-ion battery application contains software and/or complex hardware, in accordance with AC 20–115B and AC 20–152, they should be developed to the standards of DO–178B for software and DO–254 for complex hardware.

(12) The Li-ion battery must meet TSO C179.

These special conditions are not intended to replace § 23.1353 in the certification basis of the Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML. These special conditions apply only to Li-ion batteries and battery installations. The battery requirements of § 23.1353 would remain in effect for batteries and battery installations on Hawker Beechcraft Corporation, B200 and other aircraft listed on the AML that do not use Li-ion batteries.

Issued in Kansas City, Missouri, on June 4, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–14195 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2010–0002; Airspace Docket No. 09–ANM–32

Proposed Amendment of Class E Airspace; Port Angeles, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at William R. Fairchild International Airport, Port Angeles, WA. The Ediz Hook Nondirectional Radio Beacon (NDB) has been decommissioned and removed. The FAA is proposing this action for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 29, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0002; Airspace Docket No. 09–ANM–32, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0002 and Airspace Docket No. 09–ANM–32) and be submitted in triplicate to the Docket Management System (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0002 and Airspace Docket No. 09–ANM–32". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the "**ADDRESSES**" section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, at William R. Fairchild International Airport, Port Angeles, WA. This action is necessary because the Ediz Hook NDB was decommissioned and is no longer operational. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at William R. Fairchild International Airport, Port Angeles, WA.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA, E2 Port Angeles, WA [Amended]

Port Angeles, William R. Fairchild International, Airport, WA
(Lat. 48°07′13″ N., long. 123°29′59″ W.)

Within a 4.1-mile radius of the William R. Fairchild International Airport, and within 3 miles north and 2.2 miles south of the William R. Fairchild International Airport 079° bearing extending from the 4.1-mile radius to 11.4 miles east of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA, E5 Port Angeles, WA [Amended]

Port Angeles, William R. Fairchild International, Airport, WA
(Lat. 48°07′13″ N., long. 123°29′59″ W.)
Port Angeles CGAS
(Lat. 48°08′28″ N., long. 123°24′51″ W.)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of the William R. Fairchild International Airport, and within a 4.1-mile radius of Port Angeles CGAS, and within 2.7 miles north and 4.3 miles south of the William R. Fairchild International Airport 079° bearing extending from the 4.1-mile radius to 11.4 miles east of the airport, and including the airspace within 1.8 miles either side of the William R. Fairchild International Airport 285° bearing extending from the 4.1-mile radius to 7 miles west of the airport: that airspace extending upward from 1,200 feet above the surface bounded on the east by the west edge of V–495, on the south by V–4, on the west by long. 124°02′05″ W., and on the north by the United States/Canadian border.

Issued in Seattle, Washington, on May 28, 2010.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–14218 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0393; Airspace Docket No. 10–ANM–2]

Proposed Establishment of Class E Airspace and Amendment to Class D Airspace; Troutdale, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Troutdale, OR, to accommodate aircraft using Non-directional Radio Beacon (NDB) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Portland-Troutdale Airport. This action would enhance the safety and management of instrument flight rules (IFR) operations at the airport. This action also would amend the geographic coordinates of the Class D airspace area at the airport.

DATES: Comments must be received on or before July 29, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0393; Airspace Docket No. 10–ANM–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA

2010–0393 and Airspace Docket No. 10–ANM–2) and be submitted in triplicate to the Docket Management System (see "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0393 and Airspace Docket No. 10–ANM–2". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the "**ADDRESSES**" section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E surface airspace at Portland-Troutdale Airport, Troutdale, OR. Controlled airspace is necessary to accommodate aircraft using NDB, GPS, SIAPs at Portland-Troutdale Airport, and would enhance the safety and management of IFR operations. This action would also update the geographic coordinates of the Class D airspace area to be in concert with the FAA's National Aeronautical Charting Office.

Class D and Class E airspace designations are published in paragraph 5000 and 6002, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Portland-Troutdale Airport, Troutdale, OR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM OR D Portland-Troutdale, OR [Amended]

Portland-Troutdale Airport, Troutdale, OR
(Lat. 45°32′58″ N., long. 122°24′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Portland-Troutdale Airport, excluding the portion within the Portland International Airport, OR, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM OR E2 Portland-Troutdale, OR [New]

Portland-Troutdale Airport, Troutdale, OR
(Lat. 45°32′58″ N., long. 122°24′05″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Portland-Troutdale Airport, excluding the portion within the Portland International Airport, OR, Class C airspace area.

Lori Andriesen,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–14211 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1189; Airspace Docket No. 09–ANM–28]

Proposed Establishment of Class E Airspace; Toledo, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Toledo, WA, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Ed Carlson Memorial Field-South Lewis County Airport. The FAA is proposing this action to enhance the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 29, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1189; Airspace Docket No. 09–ANM–28, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–1189 and Airspace Docket No. 09–ANM–28) and be submitted in triplicate to the Docket Management System (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1189 and Airspace Docket No. 09–ANM–28". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the "**ADDRESSES**" section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface at Ed Carlson Memorial Field-South Lewis County Airport, Toledo, WA. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at the airport, and would enhance the safety and management of IFR operations.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Ed Carlson Memorial Field-South Lewis County Airport, Toledo, WA.

List of Subjects in 14 CFR Part 71

Airspace, incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA, E5 Toledo, WA [New]

Ed Carlson Memorial Field-South Lewis County Airport, WA
(Lat. 46°28′38″ N., long. 122°48′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Ed Carlson Memorial Field-South Lewis County Airport, and within 1 mile each side of the 074° bearing from the Airport, extending from the 6.9-mile radius to 7.9 miles northeast of the airport.

Issued in Seattle, Washington, on May 28, 2010.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–14214 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1248; Airspace Docket No. 09–ANM–31]

Proposed Establishment of Class E Airspace; Fillmore, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Fillmore, UT, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Fillmore Municipal Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 29, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1248; Airspace Docket No. 09–ANM–31, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–1248 and Airspace Docket No. 09–ANM–31) and be submitted in triplicate to the Docket Management System (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1248 and Airspace Docket No. 09–ANM–31". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the "**ADDRESSES**" section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface at Fillmore Municipal Airport, Fillmore, UT. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at the airport, and would enhance the safety and management of aircraft operations.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish additional controlled airspace at Fillmore Municipal Airport, Fillmore, UT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Fillmore, UT [New]

Fillmore Municipal Airport, UT
(Lat. 38°57′29″ N., long. 112°21′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Fillmore Municipal Airport, and within 2 miles each side of the 039° bearing extending from the 6.5-mile radius to 11.2 miles northeast of the Airport.

Issued in Seattle, Washington, on May 28, 2010.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–14217 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0325; Airspace Docket No. 10–AWP–2]

Proposed Modification of Class E Airspace; Willcox, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Willcox, AZ, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Cochise County Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before July 29, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–0325; Airspace Docket No. 10–AWP–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–0325 and Airspace Docket No. 10–AWP–2) and be submitted in triplicate to the Docket Management System (*see* "**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0325 and Airspace Docket No. 10–AWP–2". The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the "**ADDRESSES**" section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory

Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify Class E airspace at Cochise County Airport, Willcox, AZ. Controlled airspace extending upward from 700 feet above the surface is necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at Cochise County Airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Cochise County Airport, Willcox, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Willcox, AZ [Modified]

Cochise County Airport, AZ
(Lat. 32°14′44″ N., long. 109°53′41″ W.)

That airspace extending upward from 700 feet above the surface within 6.5-mile radius of the Cochise County Airport and within 5 miles each side of the 225° bearing from the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles southwest of the Cochise County Airport, and within 5.5 miles southeast and 4.5 miles northwest of the 055° bearing from the Cochise County Airport extending from the 6.5-mile radius to 14.5 miles northeast of the Cochise County Airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 32°22′40″ N., long. 109°25′00″ W.; to lat. 32°14′30″ N., long. 109°28′00″ W.; to lat. 32°21′20″ N., long. 109°58′00″ W.; to lat. 32°30′00″ N., long. 109°54′00″ W.; thence to point of beginning.

Issued in Seattle, Washington, on May 26, 2010.

Kevin Nolan,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–14210 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0203–201020; FRL–9161–4]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama: Birmingham; Determination of Attaining Data for the 2006 24-Hour Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Birmingham, Alabama, nonattainment area for the 2006 24-hour fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2007–2009 showing that this area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS. If this proposed determination is made final, the requirement for the State of Alabama to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plans (SIPs) related to attainment of the 2006 24-hour $PM_{2.5}$ standard for the Birmingham, Alabama, $PM_{2.5}$ nonattainment area, shall be suspended for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before July 14, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0203 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2010–0203," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics

Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0203. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or by e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

EPA is proposing to determine that the Birmingham, Alabama, $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This proposed determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2007–2009 showing that the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS.

II. What is the effect of this action?

As further discussed below, under the provisions of EPA's $PM_{2.5}$ implementation rule (see 40 CFR 51.1004(c)), a final determination for the Birmingham, Alabama, $PM_{2.5}$ nonattainment area would: (1) Suspend the requirement for the State of Alabama to submit an attainment demonstration and associated RACM (including reasonably available control technologies), RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS; and (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 2006 24-hour $PM_{2.5}$ NAAQS. Such a determination would also be separate from, and not influence or otherwise affect, any future designation determination or requirements for the Birmingham, Alabama, area. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register,** that the area has violated the 2006 24-hour $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist and the area would thereafter have to address pertinent requirements.

The determination that EPA proposes with this **Federal Register** notice, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA). This is because EPA would not yet have an approved maintenance plan for the area as required under section 175A of the CAA, nor would EPA have determined that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the Birmingham, Alabama, $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. The 2006 24-hour $PM_{2.5}$ NAAQS, which became effective on December 18, 2006 (71 FR 61144), is set forth at 40 CFR 50.13. This proposed determination, and any final determination, will have no effect on any designation determination that EPA may make for the Birmingham, Alabama, area based on any future $PM_{2.5}$ NAAQS. Conversely, any future designation determination of the Birmingham, Alabama, area will not have any effect on the determination proposed by this notice. In addition, this proposed determination, and any final determination, will have no effect on the status of the Birmingham, Alabama, nonattainment area for the 1997 annual $PM_{2.5}$ standard.

If this proposed determination is made final and the Birmingham, Alabama, area continues to monitor attainment with the 2006 24-hour $PM_{2.5}$ NAAQS, the requirement for the State of Alabama to submit for the Birmingham, Alabama, $PM_{2.5}$ nonattainment area an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS will remain suspended regardless of whether EPA designates this area as a

nonattainment area for purposes of any future $PM_{2.5}$ NAAQS.

III. What is the background for this action?

On October 17, 2006 (71 FR 61144), EPA revised the level of the health-based 24-hour $PM_{2.5}$ NAAQS to 35 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA also retained the 1997 annual $PM_{2.5}$ standard at 15 $\mu g/m^3$ based on a 3-year average of annual mean $PM_{2.5}$ concentrations, but with tighter constraints on the spatial averaging criteria. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposure to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and state air quality agencies initiated the monitoring process for the $PM_{2.5}$ NAAQS in 1999 and began operating all air quality monitors by January 2001. On November 13, 2009, EPA published its air quality designations and classifications for the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality monitoring data from those monitors for calendar years 2006–2008 (74 FR 58688). Those designations became effective on December 14, 2009. The Birmingham, Alabama, area, comprising Jefferson County, Shelby County, and a portion of Walker County, was designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS (see 40 CFR part 81). On February 24, 2010, the State of Alabama submitted a letter to EPA requesting that the Agency make a determination that the Birmingham, Alabama, $PM_{2.5}$ nonattainment area has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on data for the period 2007 through 2009.

IV. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for $PM_{2.5}$, consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA Air Quality System (AQS) database for the Birmingham, Alabama, 2006 24-hour $PM_{2.5}$ nonattainment area. All data considered have been recorded in the AQS data base, certified as meeting quality assurance requirements, and determined to have met data completeness requirements. On the basis of that review, EPA has concluded that this area attained the 2006 24-hour $PM_{2.5}$ NAAQS during the 2007–2009 monitoring period. Under EPA regulations at 40 CFR 50.7:

> The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with appendix N of this part, is less than or equal to 35 $\mu g/m^3$.

The following table shows the design values (the metrics calculated in accordance with 40 CFR part 50, appendix N, for determining compliance with the NAAQS) for the 2006 24-hour $PM_{2.5}$ NAAQS for the Birmingham, Alabama, nonattainment area monitors for the years 2007–2009.

24-HOUR $PM_{2.5}$ DESIGN VALUES FOR MONITORS IN THE BIRMINGHAM, ALABAMA, NONATTAINMENT AREA

Location	AQS site ID	2007 98th percentile	2008 98th percentile	2009 98th percentile	2007–2009 design value
North Birmingham	01–073–0023	42.8	33.5	24.4	34
McAdory	01–073–1005	30.9	25.8	21.3	26
Bruce Shaw Road	01–073–1009	31.4	27.3	22.1	27
Asheville Road	01–073–1010	33.0	24.6	19.1	26
Wylam	01–073–2003	37.7	33.5	25.2	32
Hoover	01–073–2006	29.8	25.9	20.4	25
Pinson High School	01–073–5002	34.2	26.4	21.3	27
Corner School Road	01–073–5003	32.5	30.0	21.3	28
Pelham High School	01–117–0006	30.9	24.8	21.2	26
Highland Avenue	01–127–0002	30.9	24.3	22.1	26

Because the 2007–2009 design value at each monitor in the Birmingham 2006 24-hour $PM_{2.5}$ nonattainment area is less than the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$, EPA is proposing to determine that the area has monitored attainment for this NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Proposed Action

EPA is proposing to determine that the Birmingham, Alabama, nonattainment area for the 2006 24-hour $PM_{2.5}$ NAAQS has attained the 2006 24-hour $PM_{2.5}$ NAAQS based on 2007–2009 monitoring data. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it will suspend the requirements for the State of Alabama to submit for this area an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment of the 2006 24-hour $PM_{2.5}$ NAAQS as long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

VI. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 2006);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 2, 2010.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–14215 Filed 6–11–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 535

[Docket No. NHTSA–2010–0079]

Notice of Intent To Prepare an Environmental Impact Statement for New Medium- and Heavy-Duty Fuel Efficiency Improvement Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent; request for scoping comments.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), NHTSA plans to prepare an Environmental Impact Statement (EIS) to analyze the potential environmental impacts of the agency's new fuel efficiency improvement program for commercial medium- and heavy-duty on-highway vehicles and work trucks (referred to hereinafter as MD/HD vehicles). The EIS will consider the potential environmental impacts of new standards starting with model year (MY) 2016 MD/HD vehicles, and voluntary compliance standards for MY 2014–2015 MD/HD vehicles, that NHTSA will be proposing pursuant to the Energy Independence and Security Act of 2007.

This notice initiates the NEPA scoping process by inviting comments from Federal, State, and local agencies, Indian tribes, and the public to help identify the environmental issues and reasonable alternatives to be examined in the EIS. This notice also provides guidance for participating in the scoping process and additional information about the alternatives NHTSA expects to consider in its NEPA analysis.

DATES: The scoping process will culminate in the preparation and issuance of a Draft EIS, which will be made available for public comment. To ensure that NHTSA has an opportunity to fully consider scoping comments and to facilitate NHTSA's prompt preparation of the Draft EIS, scoping comments should be received on or before July 14, 2010. NHTSA will try to consider comments received after that date to the extent the rulemaking schedule allows.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments by clicking on "Help" or "FAQs."

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9826.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Angel Jackson, Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5206. For legal issues, contact Carrie Gage, Legislation & General Law Division, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–1834.

SUPPLEMENTARY INFORMATION: In a forthcoming notice of proposed rulemaking (NPRM), NHTSA intends to propose fuel efficiency standards starting with model year (MY) 2016 commercial medium- and heavy-duty on-highway vehicles and work trucks (hereinafter referred to collectively as MD/HD vehicles), and voluntary compliance standards for MYs 2014–2015 MD/HD vehicles, pursuant to the Energy Independence and Security Act of 2007 (EISA).[1] In connection with this action, NHTSA intends to prepare an EIS to analyze the potential environmental impacts of the proposed MD/HD vehicle fuel efficiency standards and reasonable alternative standards pursuant to the NEPA and implementing regulations issued by the Council on Environmental Quality (CEQ) and NHTSA.[2] NEPA instructs Federal agencies to consider the potential environmental impacts of their proposed actions and possible alternatives in their decisionmaking. To inform decisionmakers and the public, the EIS will compare the potential environmental impacts of the agency's preferred alternative and reasonable alternatives, including a "no action" alternative. As required by NEPA, the EIS will consider direct, indirect, and cumulative impacts and discuss impacts in proportion to their significance.

Background. The Energy Policy and Conservation Act of 1975 (EPCA) mandated that NHTSA establish and implement a regulatory program for motor vehicle fuel economy to meet the various facets of the need to conserve energy. As codified in Chapter 329 of Title 49 of the U.S. Code, and as amended by EISA, EPCA sets forth extensive requirements concerning the establishment of fuel economy standards for passenger automobiles (hereinafter referred to as "passenger cars") and non-passenger automobiles (hereinafter referred to as "light trucks"). Pursuant to this statutory authority, NHTSA sets Corporate Average Fuel Economy (CAFE) standards for

[1] Public Law No. 110–140, 121 Stat. 1492 (Dec. 19, 2007) (codified at 49 U.S.C. 32901 *et seq.*).

[2] NEPA is codified at 42 U.S.C. 4321–4347. CEQ's NEPA implementing regulations are codified at 40 CFR 1500–1508, and NHTSA's NEPA implementing regulations are codified at 49 CFR part 520.

passenger cars and light trucks.[3] NHTSA considers the environmental NEPA analysis when setting CAFE standards.

In December 2007, EISA provided DOT (and by delegation, NHTSA)[4] new authority to implement, via rulemaking and regulations, "a commercial medium- and heavy-duty on-highway vehicle [5] and work truck [6] fuel efficiency improvement program." [7] This provision also directs NHTSA to "adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks." [8] This new authority permits NHTSA to set "separate standards for different classes of vehicles." [9]

EISA also provides for lead time and regulatory stability. The new MD/HD vehicle fuel efficiency improvement program NHTSA adopts pursuant to EISA must provide not less than 4 full years of regulatory lead-time and 3 full model years of regulatory stability.[10] Consistent with these requirements, we tentatively plan to propose mandatory standards to begin no sooner than MY 2016, and to remain stable for 3 years. Although EISA prevents NHTSA from enacting mandatory standards before MY 2016, NHTSA intends to propose an optional voluntary compliance standard for MYs 2014–2015 prior to mandatory regulation in MY 2016.

EISA further directs that NHTSA's MD/HD rulemaking must be conducted in consultation with the Environmental Protection Agency (EPA) and the Department of Energy.[11]

On May 21, 2010, the President issued a memorandum to the Secretary of Transportation, the Administrator of NHTSA, the Administrator of the EPA, and the Secretary of Energy, that calls for coordinated regulation of the medium- and heavy-duty vehicle market segment under EISA and under the Clean Air Act.[12] NHTSA's forthcoming proposal and EIS will be consistent with this directive.[13]

This Notice of Intent initiates the scoping process for the EIS under NEPA, 42 U.S.C. §§ 4321–4347, and implementing regulations issued by CEQ, 40 CFR Pt. 1500–1508, and NHTSA, 49 CFR Pt. 520. *See* 40 CFR 1501.7, 1508.22; 49 CFR 520.21(g). Specifically, this Notice of Intent requests public input on the scope of NHTSA's NEPA analysis and the significant issues relating to the fuel efficiency standards for MD/HD vehicles beginning in MY 2016, and the optional voluntary compliance standards for MYs 2014–2015. As part of the NEPA scoping process, this notice briefly describes the alternatives NHTSA is currently considering for the MD/HD vehicle fuel efficiency improvement program.

The Alternatives: NHTSA's upcoming NPRM will propose standards for MD/HD vehicles beginning in MY 2016, and voluntary compliance standards for MYs 2014–2015 MD/HD vehicles. This notice briefly describes a variety of possible alternatives that are currently under consideration by the agency, and seeks input from the public about these alternatives and about whether other alternatives should be considered as we proceed with the rulemaking and the EIS.

The medium- and heavy-duty truck segment is very complex. The sector consists of many stakeholders, including engine manufacturers, truck manufacturers, trailer manufacturers, and truck fleet owners. Unlike the light-duty sector, there is a very large number of heavy-duty truck manufacturers which vary in size and level of build process integration. Some trucks are assembled by a body builder using components from an engine manufacturer, powertrain manufacturer, component suppliers, and chassis builder. Each of these stakeholders has an impact on the fuel efficiency of the truck. NHTSA is therefore developing alternatives which recognize the complex industry structure and provide increasing coverage of the opportunities for fuel consumption reduction.

In developing alternatives, NHTSA must consider EISA's requirement for the MD/HD fuel efficiency program noted above. 49 U.S.C. 32902(k)(2) and (3) contain the following three requirements specific to the MD/HD vehicle fuel efficiency improvement program: (1) The program must be "designed to achieve the maximum feasible improvement"; (2) the various required aspects of the program must be appropriate, cost-effective, and technologically feasible for MD/HD vehicles; and (3) the standards adopted under the program must provide not less than four model years of lead time and three model years of regulatory stability. In considering these various requirements, NHTSA will also account for relevant environmental and safety considerations.

The alternatives that NHTSA currently has under consideration, in order of increasing fuel efficiency improvement, or fuel use reductions, are:

(1) *Alternative 1: No Action.* A "no action" alternative assumes that NHTSA would not issue a rule regarding a MD/HD fuel efficiency improvement program, and is considered to comply with NEPA and to provide an analytical baseline against which to compare environmental impacts of the other regulatory alternatives.[14] NEPA requires agencies to consider a "no action" alternative in their NEPA analyses and to compare the effects of not taking action with the effects of the reasonable action alternatives to demonstrate the different environmental effects of the action alternatives.[15] NHTSA refers to

[3] *See Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, Final Rule,* 75 FR 25324 (May 7, 2010).

[4] The Secretary delegated responsibility for implementing EPCA fuel economy requirements to NHTSA. 49 CFR 1.50, 501.2(a)(8).

[5] EISA added the following definition to the automobile fuel economy chapter of the United States Code: "commercial medium- and heavy-duty on-highway vehicle" means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more. 49 U.S.C. 32901(a)(7).

[6] EISA added the following definition to the automobile fuel economy chapter of the United States Code: "work truck" means a vehicle that—(A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and (B) is not a medium-duty passenger vehicle (as defined in section 86.1803–01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of [EISA]). 49 U.S.C. 32901(a)(19).

[7] 49 U.S.C. 32902(k)(2).

[8] *Id.*

[9] *Id.* For background on the MD/HD vehicle segment, and fuel efficiency improvement technologies available for these vehicles, see the report recently issued by the National Academy of Sciences. Transportation Research Board, National Research Council, Committee to Assess Fuel Economy Technologies for Medium- and Heavy-Duty Vehicles, *Technologies and Approaches to Reducing the Fuel Consumption of Medium- and Heavy-Duty Vehicles* (March 2010), *pre-publication copy available at http://www.nap.edu/catalog.php?record_id=12845* (last accessed May 19, 2010) (hereinafter "MD/HD NAS Report").

[10] 49 U.S.C. 32902(k)(3).

[11] 49 U.S.C. § 32902(k)(2).

[12] *See* The White House, Office of the Press Secretary, *Presidential Memorandum Regarding Fuel Efficiency Standards* (May 21, 2010), *available at http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards* (last accessed May 24, 2010); *see also* The White House, Office of the Press Secretary, *President Obama Directs Administration to Create First-Ever National Efficiency and Emissions Standards for Medium- and Heavy-Duty Trucks* (May 21, 2010), *available at http://www.whitehouse.gov/the-press-office/president-obama-directs-administration-create-first-ever-national-efficiency-and-em* (last accessed May 24, 2010).

[13] *See http://www.nhtsa.gov/fuel-economy* (last accessed June 4, 2010); *see also http://www.epa.gov/otaq/climate/regulations/420f10038.htm* (last accessed June 4, 2010).

[14] *See* 40 CFR 1502.2(e), 1502.14(d).

[15] CEQ has explained that "[T]he regulations require the analysis of the no action alternative *even*

this as the "No Action Alternative" or as a "no increase" or "baseline" alternative.

NHTSA is also proposing to consider four action alternatives, each of which would regulate the MD/HD vehicle fleet in a different way. These action alternatives would each cause the average fuel efficiency for the industry-wide MD/HD vehicle fleet to increase, on average, during the rulemaking period. The alternatives below represent the different regulatory approaches the agency is considering, in order of increasing fuel savings:

(2) *Alternative 2: Engine Only.* The EPA currently regulates heavy-duty engines, i.e., engine manufacturers, rather than the vehicle as a whole, in order to control criteria emissions.[16] Under Alternative 2, NHTSA would similarly set engine performance standards for each vehicle class, Class 2b through Class 8, and would specify an engine cell test procedure, as EPA currently does for criteria pollutants. MD/HD vehicle engine manufacturers would be responsible for ensuring that each engine could meet the applicable vehicle class engine performance standard when tested in accordance with the specified engine cell test procedure. Engine manufacturers could improve MD/HD vehicle engines by applying the combinations of fuel efficiency improvement technologies to the engine that they deem best achieve that result.

(3) *Alternative 3: Class 8 Combination Tractors.* Combination tractors [17] consume the largest fraction of fuel within the medium- and heavy-duty truck segment.[18] Tractors also offer significant potential for fuel savings due to the high annual mileage and high vehicle speed of typical trucks within this segment, as compared to annual mileage and average speeds/duty cycles of other vehicle classes. This alternative would set performance standards for both the engine of Class 8 vehicles and the overall vehicle efficiency performance for the Class 8 combination tractor segment. Under Alternative 3, NHTSA would set an engine performance standard, as discussed under Alternative 2, for Class 8 vehicles. In addition, Class 8 combination tractor manufacturers would be required to meet an overall vehicle performance standard by making various non-engine fuel saving technology improvements. These non-engine fuel efficiency improvements could be accomplished, for example, by a combination of improvements to aerodynamics, lowering tire rolling resistance, decreasing vehicle mass (weight), reducing fuel use at idle, or by adding intelligent vehicle technologies.[19] Compliance with the overall vehicle standard could be determined using a computer model that would simulate overall vehicle fuel efficiency given a set of vehicle component inputs. Using this compliance approach, the Class 8 vehicle manufacturer would supply certain vehicle characteristics (relating to the categories of technologies noted immediately above) that would serve as model inputs. The agency would supply a standard Class 8 vehicle engine's contribution to overall vehicle efficiency, making the engine component a constant for purposes of compliance with the overall vehicle performance standard, such that compliance with the overall vehicle standard could only be achieved via efficiency improvements to non-engine vehicle components. Thus, vehicle manufacturers could make any combination of improvements of the non-engine technologies that they believe would best achieve the Class 8 overall vehicle performance standard.

(4) *Alternative 4: Engines, Tractors, and Class 2b through 8 Trucks.* This alternative would set engine fuel efficiency performance standards and overall vehicle fuel efficiency performance standards for Class 2b and 3 work trucks and Class 3 through Class 8 vocational trucks. This alternative essentially sets fuel efficiency performance standards for both the engines and the overall vehicles in the entire medium- and heavy-duty truck sector. Compliance with each vehicle class's engine performance standard would be determined as discussed in the description of Alternative 2. Compliance with the tractor and vocational truck classes' overall vehicle performance standard (Class 3 through 8 trucks) would be determined as discussed in the description of Alternative 3. Compliance for the Class 2b and 3 work trucks would be determined through a fleet averaging process similar to determining passenger car and light truck compliance with CAFE standards.

(5) *Alternative 5: Engines, Tractors, Trucks, and Trailers.* This alternative adds a performance standard for fuel efficiency of commercial trailers to the fuel efficiency performance standards for Class 2b and 3 work truck and Class 3 through Class 8 vocational truck engines and the performance standard for the overall fuel efficiency of those vehicles, as described above.

Each of the alternatives proposed by NHTSA represents, in part, a different way NHTSA could establish a MD/HD vehicle fuel efficiency improvement program pursuant to EISA, considering each of the requirements above and NEPA's policies. The agency may select one of the above-identified alternatives as its Preferred Alternative or it may structure a MD/HD vehicle fuel efficiency improvement program in such a way that average fuel efficiency, or fuel savings, falls between the levels reflected in the alternatives proposed in this Scoping Notice. For example, as noted above, EISA requires that NHTSA provide a four-year regulatory lead-time to manufacturers. For each of the action alternatives, NHTSA will consider a voluntary early compliance program, which would provide for an early start date with a two year lead-time. This version of each alternative would allow the program to achieve greater and earlier reductions in fuel consumption than a rule with a four year lead-time.

Under NEPA, the purpose of and need for an agency's action inform the range of reasonable alternatives to be considered in its NEPA analysis.[20] The above alternatives represent a broad range of approaches under consideration for setting proposed MD/HD vehicle fuel efficiency standards and whose environmental impacts we propose to evaluate under NEPA.

As detailed below, NHTSA invites comments to ensure that the agency considers a full range of reasonable alternatives in establishing a MD/HD vehicle fuel efficiency improvement program and that the agency identifies the environmental impacts and focuses its analyses on all the potentially

if the agency is under a court order or legislative command to act. This analysis provides a benchmark, enabling decision makers to compare the magnitude of environmental effects of the action alternatives. It is also an example of a reasonable alternative outside the jurisdiction of the agency which must be analyzed. [*See* 40 CFR 1502.14(c).] * * * Inclusion of such an analysis in the EIS is necessary to inform Congress, the public, and the President as intended by NEPA. [*See* 40 CFR 1500.1(a).]" *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* 46 FR 18026 (1981) (emphasis added).

[16] There are several reasons for this approach. In many cases the engine and chassis are produced by different manufacturers and it is more efficient to hold a single entity responsible. Also, testing an engine cell is more accurate and repeatable than testing a whole vehicle.

[17] Class 8 combination trucks have a tractor and one or more trailers and a gross combined weight, *i.e.,* a maximum weight rating, of up to 80,000 pounds, with higher weights allowed in specific circumstances. MD/HD NAS Report, *supra* note 9, at 1–7.

[18] *Id.* at 8–2.

[19] *See* the MD/HD NAS Report for discussions of the potential fuel efficiency improvement technologies that can be applied to each of these vehicle components. MD/HD NAS Report, *supra* note 9, Chapter 5.

[20] 40 CFR 1502.13.

significant impacts related to each alternative. Comments may go beyond the approaches and information that NHTSA used in developing the above alternatives and in identifying the potentially significant environmental effects. The agency may modify the proposed alternatives and environmental effects that will be analyzed in depth based upon the comments received during the scoping process and upon further agency analysis.

Scoping and Public Participation: The scoping process initiated by this notice seeks to determine "the range of actions, alternatives, and impacts to be considered" in the EIS and to identify the most important issues for analysis involving the potential environmental impacts of NHTSA's MD/HD vehicle fuel efficiency improvement program.[21] NHTSA's NEPA analysis for the MD/HD vehicle fuel efficiency standards beginning in MY 2016, and the voluntary MYs 2014–2015 standards, will consider the direct, indirect and cumulative environmental impacts of the proposed standards and those of reasonable alternatives.

While the main focus of NHTSA's prior CAFE EISs (*i.e.,* the EIS for Model Years 2012–2016 Passenger Car and Light Truck CAFE Standards [22] and the EIS for Model Years 2011–2015 Passenger Car and Light Truck CAFE Standards [23]) was the quantitative and qualitative analysis of impacts to energy, air quality, and climate, it also addressed other potentially affected resources. NHTSA discussed the related direct, indirect, and cumulative impacts, positive or negative, of the alternatives on other potentially affected resources (water resources, biological resources, land use, hazardous materials, safety, noise, historic and cultural resources, and environmental justice).

For the current EIS, NHTSA intends to focus on the impacts in much the same manner as it did in the prior EIS, and will incorporate by reference any of the discussions from the February 2010 Final EIS that are relevant. NHTSA is currently considering analyzing environmental impacts related to fuel and energy use, emissions including GHGs and their effects on temperature and climate change, air quality, natural resources, and the human environment. NHTSA also will factor into its impact analysis the cumulative impacts of the proposed MD/HD vehicle fuel efficiency standards starting in MY 2016, and the voluntary MYs 2014–2015 standards. In accordance with CEQ regulations, cumulative effects are "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such action." [24] NHTSA specifically requests comment on how the agency should assess cumulative impacts, including those from various emissions source categories and across a range of geographic locations. For example, should we consider the incremental impact of MD/HD efficiency standards when considered with the impacts of other reasonably foreseeable actions that affect emissions in any portion of the motor vehicle sector? Or should NHTSA expand the incremental impact examination to all transportation sector emissions? Or should the agency limit the incremental impact analysis to environmental effects caused by emissions only from the MD/HD vehicle segment?

NHTSA anticipates considerable uncertainty in estimating and comparing the potential environmental impacts among alternatives related to climate change in particular. For instance, NHTSA expects that there will be considerable uncertainty associated with its estimates of the range of potential global mean temperature changes that may result from changes in fuel and energy consumption and GHG emissions due to a range of new MD/HD vehicle fuel efficiency standards. It also may be difficult to predict and compare the ways in which potential temperature changes attributable to new MD/HD vehicle fuel efficiency standards may, in turn, affect many aspects of the environment. NHTSA will work expeditiously to gather all relevant and credible information. Where information is incomplete or unavailable, the agency will acknowledge the uncertainties in its NEPA analysis, and will apply the provisions in the CEQ regulations addressing "[i]ncomplete or unavailable information." [25]

Currently, NHTSA intends to rely primarily upon the Intergovernmental Panel on Climate Change (IPCC) 2007 Fourth Assessment Report, and subsequent updates, reports of the U.S. Climate Change Science Program (CCSP) and the current U.S. Global Change Research Program (U.S. GCRP), and the EPA Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act and the accompanying Technical Support Document (referred to collectively hereinafter as the EPA Endangerment Finding), as sources for recent "summar[ies] of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment." [26] NHTSA believes that the IPCC Fourth Assessment Report, the CCSP and U.S. GCRP Reports, and the EPA Endangerment Finding are the most recent, most comprehensive summaries available, but recognizes that subsequent peer-reviewed research may provide additional relevant and credible evidence not accounted for in these Reports. NHTSA expects to consider such subsequent information as well, to the extent that it provides relevant and credible evidence. NHTSA also expects to rely on the Final EIS it published in February 2010,[27] incorporating material by reference "when the effect will be to cut down on bulk without impeding agency and public review of the action." [28]

In preparing this notice of public scoping to identify the range of actions, alternatives, and impacts to be analyzed in depth in the EIS, NHTSA has consulted with CEQ and EPA. Through this notice, NHTSA invites all Federal agencies, Indian Tribes, State and local agencies with jurisdiction by law or special expertise with respect to potential environmental impacts of proposed MD/HD vehicle fuel efficiency standards, and the public to participate in the scoping process.[29]

[21] *See* 40 CFR 1500.5(d), 1501.7, 1508.25.

[22] *See Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2012–2016,* Docket No. NHTSA–2009–0059–0140 (February 2010).

[23] *See Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* Docket No. NHTSA–2008–0060–0605 (October 2008).

[24] 40 CFR 1508.7.

[25] *See* 40 CFR 1502.22.

[26] 40 CFR 1502.22(b)(3); *see* 40 CFR 1502.21. The report and the IPCC's earlier reports are available at *http://www.ipcc.ch/* (last visited March 11, 2008).

[27] *See Final Environmental Impact Statement, Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2012–2016,* Docket No. NHTSA–2009–0059–0140 (February 2010).

[28] 40 CFR 1502.21.

[29] Consistent with NEPA and implementing regulations, NHTSA is sending this notice directly to: (1) Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts involved or authorized to develop and enforce environmental standards; (2) the Governors of every State, to share with the appropriate agencies and offices within their administrations and with the local jurisdictions within their States; (3) organizations representing state and local governments and Indian tribes; and (4) other stakeholders that NHTSA reasonably expects to be interested in the NEPA analysis for the MD/HD vehicle fuel efficiency standards. *See* 42

Specifically, NHTSA invites all stakeholders to participate in the scoping process by submitting written comments concerning the appropriate scope of NHTSA's NEPA analysis and the significant issues for the proposed MD/HD vehicle fuel efficiency standards to the docket number identified in the heading of this notice, using any of the methods described in the **ADDRESSES** section of this notice. NHTSA does not plan to hold a public scoping meeting, because written comments will be effective in identifying and narrowing the issues for analysis.

NHTSA is especially interested in comments concerning the evaluation of climate change impacts, and the relative impact of an increased share of any emissions reduction resulting from the proposed MD/HD vehicle fuel efficiency standards coming from diesel fuel savings, as opposed to emissions reductions resulting from conventional gasoline savings analyzed in prior CAFE NEPA analyses. Specifically, NHTSA requests:

- Peer-reviewed scientific studies that have been issued since the EPA Endangerment Finding and that address or may inform: (a) The impacts on CO_2 and other greenhouse gas emissions that may be associated with any of the alternatives under consideration; (b) the impacts on climate change that may be associated with these emission changes; or (c) the time periods over which such impacts on climate may occur.
- Comments on how NHTSA should discuss or estimate the potential localized or regional impacts of decreased diesel fuel use, including potential upstream impacts (changes in fuel use and emissions levels resulting from the extraction, production, storage, and distribution of fuel), and comments on how NHTSA should estimate the potential impacts of these localized or regional changes on the environment.
- Comments on what time frame NHTSA should use to evaluate the environmental impacts that may result from setting MD/HD vehicle fuel efficiency standards, both indirect and cumulative.
- Peer-reviewed reports analyzing the potential impacts of climate change within the United States or in particular geographic areas of the United States. Such reports could be prepared by or on behalf of States, local governments, Indian tribes, regional organizations, academic researchers, or other interested parties.
- NHTSA understands that there are a variety of potential alternatives that could be considered that fit within the purpose and need for the proposed rulemaking, as set forth in EISA. NHTSA, therefore, seeks comments on how best to structure or describe a reasonable alternative for purposes of evaluating it under NEPA. Specifically, NHTSA seeks comments on what criteria should be used to structure such alternative, given the requirements for the new regulatory program under EISA, while being consistent with the statutory requirement of designing the program "to achieve the maximum feasible improvement." *See* 49 U.S.C. 32902(k)(2). When suggesting a possible alternative, please explain how it would satisfy the EISA requirements (in particular, how and why it would be appropriate, cost-effective, and technologically feasible) and give effect to NEPA's policies.[30]

In addition, as noted above, NHTSA requests comments on how the agency should assess cumulative impacts, including those from various emissions source categories and from a range of geographic locations. Also in regard to cumulative impacts, the agency requests comments on how to consider the incremental impacts from foreseeable future actions of other agencies or persons, and how they might interact with the MD/HD vehicle fuel efficiency improvement program's incremental cumulative impacts.

Two important purposes of scoping are identifying the significant issues that merit in-depth analysis in the EIS and identifying and eliminating from detailed analysis the issues that are not significant and therefore require only a brief discussion in the EIS.[31] In light of these purposes, written comments should include an Internet citation (with a date last visited) to each study or report you cite in your comments if one is available. If a document you cite is not available to the public online, you should attach a copy to your comments. Your comments should indicate how each document you cite or attach to your comments is relevant to the NEPA analysis and indicate the specific pages and passages in the attachment that are most informative.

The more specific your comments are, and the more support you can provide by directing the agency to peer-reviewed scientific studies and reports as requested above, the more useful your comments will be to the agency. For example, if you identify an additional area of impact or environmental concern you believe NHTSA should analyze, or an analytical tool or model that you believe NHTSA should use to evaluate these environmental impacts, you should clearly describe it and support your comments with a reference to a specific peer-reviewed scientific study, report, tool or model. Specific, well-supported comments will help the agency prepare an EIS that is focused and relevant, and will serve NEPA's overarching aims of making high quality information available to decisionmakers and the public by "concentrat[ing] on the issues that are truly significant to the action in question, rather than amassing needless detail."[32] By contrast, mere assertions that the agency should evaluate broad lists or categories of concerns, without support, will likely not assist the scoping process for the proposed standards.

Please be sure to reference the docket number identified in the heading of this notice in your comments. NHTSA intends to correspond directly to interested parties by e-mail. Thus, please also provide an e-mail address (or a mailing address if you decline e-mail communications).[33] These steps will help NHTSA to manage a large volume of material during the NEPA process. All comments and materials received, including the names and addresses of the commenters who submit them, will become part of the administrative record and will be posted on the Web site at *http://www.regulations.gov.*

Based on comments received during scoping, NHTSA expects to prepare a draft EIS for public comment later this year and a final EIS to support a final rule in 2011.[34] In regard to NHTSA's decisionmaking schedule, the agency expects to issue a final rule in 2011 as well.

Separate **Federal Register** notices will announce the availability of the draft EIS, which will be available for public comment, and the final EIS, which will be available for public inspection. NHTSA also plans to continue to post information about the NEPA process and this MD/HD vehicle fuel efficiency improvement program rulemaking on its Web site (*http://www.nhtsa.dot.gov*).

U.S.C. 4332(2)(C); 49 CFR 520.21(g); 40 CFR 1501.7, 1506.6.

[30] *See* 40 CFR 1502.14, *Alternatives Including the Proposed Action* (explaining what agencies should include in the alternatives section of an EIS).

[31] 40 CFR 1500.4(g), 1501.7(a).

[32] 40 CFR 1500.1(b).

[33] If you prefer to receive NHTSA's NEPA correspondence by U.S. mail, NHTSA intends to provide its NEPA publications via a CD readable on a personal computer.

[34] 40 CFR 1506.10.

Issued: June 9, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–14167 Filed 6–11–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 100330171–0232–01]

RIN 0648–AY79

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Framework

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the framework regulations specifying procedures for implementing fishing capacity reduction programs (reduction programs) in accordance with the Magnuson-Stevens Fishery Conservation and Management (Magnuson-Stevens) Reauthorization Act of 2007. A reduction program pays harvesters in a fishery that has more vessels than capacity either to surrender their fishing permits including relevant fishing histories for that fishery, or surrender all their fishing permits and cancelling their fishing vessels= fishing endorsements by permanently withdrawing the vessel from all fisheries. The cost of the program can be paid by post-reduction harvesters, taxpayers, or others. The intent of a program is to decrease the number of harvesters in the fishery, increase the economic efficiency of harvesting, and facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

DATES: Comments must be received by July 29, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY79, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*; or

Mail: Michael A. Sturtevant, Financial Services Division, NMFS–MB5, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments will be posted for public viewing after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to *David__Rosker@ob.eop.gov*, or fax to (202) 395–7825. Copies of the Initial Regulatory Flexibility Analysis (IRFA) and Regulatory Impact Review prepared for this action may be obtained from Michael A. Sturtevant at the above address.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at 301–713–2390 or michael.a.sturtevant@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at *www.gpoaccess.gov/fr*.

I. Statutory and Regulatory Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, in 1996 Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). The framework regulations to conduct these reduction programs were published as an interim final rule on May 18, 2000 (65 FR 31430) and codified as subpart L to 50 CFR part 600. To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving fishing capacity reduction loans have been codified at 46 U.S.C. 53735.

This action proposes to amend subpart L to 50 CFR part 600 to implement the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109–479) amendments for requesting and conducting fishing capacity reduction programs.

II. Magnuson-Stevens Reauthorization Act Changes

The Magnuson-Stevens Reauthorization Act requires several modifications to the framework regulations.

First, the Magnuson-Stevens Reauthorization Act contained a provision that states that, in addition to the appropriate fishery management Council or Governor of a State, a majority of permit holders in the fishery may request a buyback program. Such a program may be conducted if the Secretary determines that the program is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery. As a result of this change, NMFS is amending the definition of "Requester@ and the regulations outlining the process for submission requests to allow permit holders, if they constitute a majority, to request a buyback program.

Second, the Magnuson-Stevens Reauthorization Act clarified that a permit holder relinquishes any future limited access system claims associated with the permit or vessel participating in a reduction program and that (if not scrapped) the vessel will be effectively prevented from fishing in Federal or state waters, or fishing on the high seas or in the waters of a foreign nation. The Magnuson-Stevens Reauthorization Act revised section 312(b)(2)(A) to recognize that the owner of a fishing vessel may be different from the permit holder. As a result of this change, NMFS is amending the regulations to require that, along with surrendering the permit authorizing the participation of the vessel in the fishery, for permanent revocation, both the vessel owner and the permit holder, if different from the vessel owner, relinquish any claim associated with the vessel or permit that could qualify such owner or permit holder for any present or future limited access system permit in the fishery for which the program is established or in any other fishery.

Third, the Magnuson-Stevens Reauthorization Act added Section 312(b)(5) regarding payment conditions stating that if a vessel is not scrapped,

the Secretary of Commerce (Secretary) must certify that the vessel will not be used for fishing in the waters of a foreign nation or fishing on the high seas. As a result of this change, NMFS is amending the regulations so that the Secretary must make such certification before making payment. Because each program is so different, and would need to include fishery-specific information and requirements, NMFS is not proposing at this time specific details that must be included in the certification plans, but will provide the requirements for the certification process on a case-by-case basis for each reduction fishery program when the regulations for that program is published in the **Federal Register**.

Although NMFS is not proposing a certification process in this rulemaking, NMFS solicits comments on whether harvester proponents who do not wish to scrap buyback vessels should develop and provide as part of their plan, a clearly outlined plan to help track and monitor the vessels in order to be granted certification by the Secretary under Section 312(b)(5) of the Magnuson-Stevens Reauthorization Act.

NMFS desires to minimize the potential for post buyback misuse of vessels as contract obligations by some buyback participants have been breached in the past. In cases where vessels are sold, new owners have violated the spirit and the letter of the statute and regulations in the use of the buyback vessel. In addition, even if the vessels are not sold after reduction payment is tendered, some vessel owners do not maintain proper documentation of their vessel with the Coast Guard which makes tracking the proper use of the vessel nearly impossible. Additionally, some vessel owners have abandoned their vessels. In some cases, this has caused environmental damage, created abandonment issues, and/or forfeiture proceedings.

NMFS believes that the burden of tracking and monitoring of reduction vessels should fall on the owner of the vessel, and not NOAA, other Federal agencies, or the taxpayers. Monitoring and tracking vessels whose fisheries endorsement has been cancelled is simply not budgeted for in the NMFS, NOAA, Commerce, or Coast Guard annual budgets. Therefore, any action that is taken by NMFS or other agencies to identify, track, enforce rules, or correct any problems created by vessels that are not scrapped cannot be undertaken with ease, and without substantial cost of taxpayer dollars, either through direct tracking and enforcement, or through re-tasking limited government resources. For these reasons, NMFS solicits comments on the submission of a clearly outlined plan to help track and monitor the vessels in order to be granted certification by the Secretary under Section 312(b)(5) of the Magnuson-Stevens Reauthorization Act.

Fourth, the Magnuson-Stevens Reauthorization Act also changed the approval threshold for the capacity reduction referendum. The reauthorized Act now states that a fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute "at least a majority of the permit holders in the fishery, or 50 percent of the permitted allocation of the fishery, who participate in the fishery". Previously, a referendum was approved with a two-thirds majority of the participating voters. As a result of this amendment, NOAA is proposing to amend its regulations that discusses the referendum procedure to implement this change.

III. Summary of Revisions

NMFS proposes to revise the following sections of the regulations of subpart L to 50 CFR part 600 with this proposed action:

(1) Sec. 600.1000. This section is revised to amend the definition of "Requester" to include the majority of permit holders in a fishery.

(2) Sec. 600.1001(a). This section is amended to provide for authority that a majority of permit holders in the fishery may initiate a voluntary fishing capacity reduction program.

(3) Sec. 600.1002(c). This new provision states the Secretary may not make a fishing capacity reduction program payment with respect to a reduction vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of the U.S., a foreign nation, or on the high seas.

(4) Sec. 600.1009(a)(5)(ii). This section is revised to clarify title restrictions on any reduction vessel that is not scrapped.

(5) Sec. 600.1010(a). This section is revised to reflect the new industry fee system approval threshold to at least a majority of the permit holders in the fishery who participated in the fishery.

IV. Classification

The Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Act, the Magnuson-Stevens Reauthorization Act (Public Law 109–479), and other applicable laws.

The proposed revisions to the framework regulations do not propose any major new programs. The framework modifications implemented by this rule impact only the process under which fishery capacity reduction programs are created and implemented, and would not directly implement changes to specific fisheries. Therefore, the rulemaking does not lend itself to quantitative or qualitative analysis. For example, the analysis of impacts on vessels, vessel revenues, port revenues, fish stock impacts, etc. are not possible in the absence of identifying specific fisheries and buyback program fishery components. Each individual program will be implemented through the rulemaking process in accordance with 5 U.S.C. 553, and thus, each program will be individually evaluated and appropriately analyzed under NEPA at the appropriate time. This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NOAA Administrative Order (NAO) 216–6.

The Office of Management and Budget determined that this proposal is not significant under Executive Order 12866. NMFS prepared a Regulatory Impact Review which is available upon request (see **ADDRESSES**).

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. The major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. When an agency publishes a proposed rule, it must either 'certify' that the action will not have a significant adverse impact on a substantial number of small entities, and support that certification with the "factual basis" for the decision; or it must prepare and make available for public review an Initial Regulatory Flexibility Analysis that describes the impact of the proposed rule on small entities. When an agency publishes a

final rule, it must prepare a Final Regulatory Flexibility Analysis.

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The framework modifications implemented by this rule impact only the process under which fishery capacity reduction programs are created and implemented, and would not directly implement changes to specific fisheries. Therefore, the rulemaking does not lend itself to quantitative or qualitative analysis. Each individual program will be implemented through the rulemaking process in accordance with 5 U.S.C. 553, and thus, each program will be individually evaluated and analyzed at the appropriate time including its impact on small businesses. Therefore, the Chief Counsel for Regulation of the Department of Commerce certifiedto the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain any new collection of information requirements subject to the PRA. The estimates of the public reporting burden that have been previously approved by OMB, under OMB Control No. 0648–0376 remain valid. Send comments regarding the collection of information requirements contained in this proposed rule, including the burden hour estimates, and suggestions for reducing the burdens to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs-business, Reporting and recordkeeping requirements.

Dated: June 8, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 600 as follows:

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

2. In § 600.1000, the definition of "Requester" is revised to read as follows:

§ 600.1000 Definitions.

* * * * *

Requester means a Council for a fishery identified in § 600.1001(c) or a state governor for a fishery identified in § 600.1001(d), or a majority of permit holders in the fishery.

* * * * *

3. In § 600.1001, paragraph (a) is revised to read as follows:

§ 600.1001 Requests.

(a) A Council, the Governor of a State under whose authority a proposed reduction fishery is subject, or a majority of permit holders in the fishery may request that NMFS conduct a program in that fishery. Each request shall be in writing. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

* * * * *

4. In § 600.1002, paragraph (c) is added to read as follows:

§ 600.1002 General requirements.

* * * * *

(c) The Secretary may not make a fishing capacity reduction program payment with respect to a reduction vessel that will not be scrapped unless the Secretary certifies that the vessel will not be used for fishing in the waters of the U.S., a foreign nation, or on the high seas.

5. In § 600.1009, paragraph (a)(5)(ii) is revised to read as follows:

§ 600.1009 Bids.

(a) * * *

(5) * * *

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is Federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing:

(*1*) In any area subject to the jurisdiction of the United States, or any state, territory, commonwealth, or possession of the United States, or

(*2*) On the high seas, or

(*3*) In the waters of a foreign nation; or

(B) Scrapping of all reduction vessels involved in a fishing capacity reduction program, unless the reduction program vessel has been certified by the Secretary, and the requirements established under § 600.1002(c) are met. Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, the Secretary may take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost, damages, or other expense NMFS incurred in the scrapping of the reduction vessel.

* * * * *

6. In § 600.1010, paragraph (a) is revised to read as follows:

§ 600.1010 Referenda.

(a) *Referendum success.* A referendum is successful if at least a majority of the permit holders in the fishery who participate in the fishery cast ballots in favor of an industry fee system.

* * * * *

[FR Doc. 2010–14246 Filed 6–11–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 113
Monday, June 14, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Acceptance of Proposals for the Section 538 Multi-Family Housing Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2010; Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Rural Housing Service (RHS) published a document in the **Federal Register** of May 10, 2010, announcing the implementation of a demonstration program under the section 538 Guaranteed Rural Rental Housing Program (GRHHP) for Fiscal Year 2010. A correction to the document is needed to extend the application obligation date of eligible applications. This action is to ensure that all applications that meet program criteria and have responded accordingly will be considered in the Demonstration Program.

FOR FURTHER INFORMATION CONTACT: Tammy Daniels, 202–720–0021.

Correction

In the **Federal Register** of May 10, 2010, in FR Doc. 2010–10929, on page 25830, in the first column, correct paragraphs 4 and 5 to read:

4. A Lender must have submitted its application under the GRRHP 2008 Notice published February 4, 2008, Volume 73 FR 6469–6477, the GRRHP 2009 Notice published January 21, 2009, Volume 74 FR 3551–3558, or the GRRHP 2009 Notice published on June 26, 2009, Volume 74 FR 30503–30510 or the GRRHP 2010 Notice published February 26, 2010, Volume 75 FR 8896–8902.

5. The application to be considered must have been obligated from October 1, 2007 to December 17, 2010.

On page 25830, in the first column, under the heading "Demonstration Program Selection Process," correct the second paragraph to read:

"The first round of selections into the Demonstration Program will be made on May 20, 2010. In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program set-aside funds of approximately $10 million, then the selection process for any remaining funds will be conducted again June 11, 2010. In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program authority, then until all funds are exhausted, an additional selection process will be conducted on the 3rd Friday of each month starting July 16, 2010. December 17, 2010, will be the last possible selection date unless the Final Rule is published as explained below. All applicants will be notified of the selection results no later than 30 business days from the date of selection."

Dated: June 7, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–14161 Filed 6–11–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Aldo Leopold Wilderness Research Institute Wilderness Visitor Study

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection: Aldo Leopold Wilderness Research Institute Wilderness Visitor Study.

DATES: Comments must be received in writing on or before August 13, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Alan Watson, Aldo Leopold Wilderness Research Institute, USDA Forest Service Rocky Mountain Research Station, 790 E. Beckwith Ave., Missoula, MT 59801. Comments also may be submitted via e-mail to: *awatson@fs.fed.us.*

The public may inspect comments received at the Aldo Leopold Wilderness Research Institute, USDA Forest Service Rocky Mountain Station, 790 E. Beckwith Ave., Missoula, MT, during normal business hours. Visitors are encouraged to call ahead to 406–542–4197 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Alan Watson, Aldo Leopold Wilderness Research Institute at 406–542–4197. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Aldo Leopold Wilderness Research Institute Wilderness Visitor Study.

OMB Number: 0596–NEW.

Type of Request: NEW.

Abstract: The Aldo Leopold Wilderness Research Institute in Missoula, Montana, works under an interagency agreement with the Department of the Interior, National Park Service, to provide information to support management planning for public wild lands. Management of specific parks are directed by laws, policies, and Wilderness Stewardship Plans. The Wilderness Act of 1964 directs the National Wilderness Preservation System be managed to protect natural wilderness conditions and to provide outstanding opportunities for the public to find solitude or primitive and unconfined types of recreational experiences. The National Park Service is expected to understand trends in numbers of visitors; patterns of use; and how users feel about administrative facilities, trail conditions, and policies aimed at controlling visitor impacts to wilderness ecosystems.

To help meet the National Park Service's mandates related to wilderness recreation, scientists at the Aldo Leopold Wilderness Research Institute have a long history of periodically monitoring and reporting to managers and the public trends in use, user

characteristics, and visitor input on management actions for National Park Wilderness. Emphasis is often on how well the public perceives the National Park Service is meeting the mandate of guiding legislation. National Park personnel use the collected information to ensure that the Agency is meeting their legislated mandates, understanding how visitors' recreational activities influence the natural resources of the park, and making certain that wilderness-type recreation experiences are protected.

Managers at Sequoia and Kings Canyon National Parks have requested assistance from the Aldo Leopold Wilderness Research Institute to gather, analyze, and report on information from visitors to contribute to wilderness stewardship planning. Sequoia and Kings Canyon National Parks in California contain 808,000 acres of federally protected wilderness and another 30,000 acres are managed as wilderness per National Park Service policies. Managers desire to understand visitor attitudes about administrative and scientific facilities in the wilderness, methods used to protect wilderness conditions and social conditions, actions taken by managers to control impacts, visitor perceptions of wilderness character trends, and demographics of visitors. The data from this information collection will be stored at the Aldo Leopold Wilderness Research Institute in Missoula, Montana. Scientists working at the Research Institute will conduct the data analysis.

The National Park Service will use information from this collection to help make the Wilderness Stewardship Plan responsive to legislative and policy guidelines as well as acknowledging a changing client base of American citizens and foreign visitors through creating understanding of:

1. How users feel about such administrative facilities as ranger stations, crew camps, and radio repeaters; user support facilities such as food storage lockers, bridges, and signs; research support facilities such as wells, plot markers, weirs and snow pillows; trail quality; hand held technology use, and short-term manipulations of conditions to achieve long-term naturalness goals;

2. How different kinds of visitors (*e.g.,* overnight users, hikers, stock users, outfitted, and non-outfitted groups) feel about the level of isolation and immersion in nature they perceive; how they evaluate encounters with others; and how they evaluate visitor impacts and management actions taken to control those impacts;

3. How different kinds of users define the most important elements of the wilderness environment and social conditions, such as naturalness, wildness, challenge, self-reliance, crowding, and aesthetics; and

4. How current visitor use characteristics, attitudes and use patterns differ from those observed in the past and at other places, and how they may be projected to differ in the future.

Respondents will be overnight recreation visitors to the wilderness of Sequoia and Kings Canyon National Parks during the summers of 2011 and 2012. Visitors will be contacted from information they provide in their required overnight wilderness permits. Visitors will be provided alternative methods of response to the survey about their recreation experience in the Park: (1) Mail the survey to the Leopold Institute using a postage paid envelope, (2) receive an electronic e-mail form of the survey, or (3) access a web-based form of the electronic survey. All responses will be voluntary. Data collected in this information collection are not available from other sources and nothing comparable has been collected at Sequoia and Kings Canyon National Parks since 1990.

This survey will only ask overnight recreation visitors questions about their recreation visit, their personal demographics relevant to education and service provision, and factors that have influenced or are likely to influence their recreational wilderness visits. Survey respondents will be told that this information is voluntary and in confidence (their names will not be connected to their responses in any way).

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 500.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 167 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the National Park Service, including whether the information will have practical or scientific utility; (2) the accuracy of the Aldo Leopold Wilderness Research Institute's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 7, 2010.

Angela V. Coleman,

Associate Deputy Director, Research & Development.

[FR Doc. 2010–14203 Filed 6–11–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0090]

Notice of Revision and Request for Extension of Approval of an Information Collection; Swine Health

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with regulations to prevent the interstate spread of swine diseases and protect swine health and to request extension of approval of the information collection

DATES: We will consider all comments that we receive on or before August 13, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0090*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2009-0090, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0090.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations to prevent the interstate spread of swine diseases and to protect swine health, contact Dr. Troy Bigelow, Staff Veterinarian, Aquaculture, Swine, Equine, and Poultry Programs, VS, APHIS, Federal Building, Room 891, Des Moines, IA 50309; (515) 284-4121. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Swine Health.

OMB Number: 0579-0137.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock. APHIS regulations at 9 CFR, chapter I, subchapter C, govern the interstate movement of animals and other articles to prevent the spread of pests and diseases of livestock within the United States.

The regulations in part 71 contain requirements for the interstate movement of swine within a production system to prevent the spread of swine diseases, and Part 85 regulates the interstate movement of swine to prevent the spread of the pseudorabies virus (PRV). Under the Pseudorabies Eradication Program, part 52 allows for the payment of indemnity to owners for the depopulation of swine known to be infected with PRV. Together these regulations protect the health of the U.S. swine population. Information collection activities associated with the regulations include, for part 71, a swine production system health plan and an interstate movement report and notification; for part 85, a Permit to Move Restricted Animals (VS Form 1-27), a certificate of veterinary inspection, an owner-shipper statement, an accredited veterinarian's statement concerning embryos for implantation and semen shipments, and the completion and recordkeeping of a Quarterly Report of Pseudorabies Control Eradication Activities (VS Form 7-1); and, for part 52, an appraisal and indemnity claim form (VS Form 1-23), a herd management plan, VS Form 1-27, and a report of net salvage goods. Additionally, the swine must be moved to slaughter in a means of conveyance sealed with an official seal.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

This information collection includes information collection requirements approved under OMB control numbers 0579-0070, "Pseudorabies," 0579-0137, "Pseudorabies in Swine; Payment of Indemnity," and 0579-0161, "Interstate Movement of Swine Within a Production System." After OMB approves and combines the burden for the three collections under a single collection titled "Swine Health" (0579-0137), the Department will retire numbers 0579-0070 and 0579-0161.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2567212 hours per response.

Respondents: U.S. swine herd owners, producers, and shippers; hobby farmers; State animal health officials; and accredited veterinarians.

Estimated annual number of respondents: 7,670.

Estimated annual number of responses per respondent: 15.154498.

Estimated annual number of responses: 116,235.

Estimated total annual burden on respondents: 29,840 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14244 Filed 6–11–10; 8:45 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Forest Service

List of Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Decisions Subject to Administrative Appeal Under the Optional Appeal Procedures Available During the Planning Rule Transition Period.

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Forests and the Regional Office of the Alaska Region will use to publish legal notice of all decisions subject to appeal under the Optional Appeal Procedures Available During the Planning Rule Transition Period (formerly 36 CFR part 217). The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of decisions subject to appeal during the transition period, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers begins on July 1, 2010. This list of newspapers will remain in effect until it is superceded by a new list, published in the **Federal Register**.

ADDRESSES: Ken Post, Appeals Specialist; Forest Service, Alaska

Region; P.O. Box 21628; Juneau, Alaska 99802–1628.

FOR FURTHER INFORMATION CONTACT: Ken Post, Appeals Specialist; (907) 586–8796.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of decisions subject to appeal. The timeframe for appeal under the Optional Appeal Procedures Available During the Planning Rule Transition Period shall be based on the date of publication of the legal notice of the decision in the newspaper of record identified in this notice.

The newspapers to be used for giving notice of Forest Service decisions in the Alaska Region are as follows:

Alaska Regional Office

Decisions of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor: Anchorage Daily News, published daily in Anchorage, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Supplemental notices may be published in any newspaper, but the timeframes for filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: May 28, 2010.

Beth G. Pendleton,

Regional Forester.

[FR Doc. 2010–14065 Filed 6–11–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions; (2) approval of minutes; (3) public comment; (4) Chairman's perspective; (5) project presentations; (6) next agenda.

DATES: The meeting will be held on June 24, 2010 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Tehama County Farm Bureau, 275 Sale Lane, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Randy Jero, Committee Coordinator, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988. (530) 934–1269; E-mail: *rjero@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by June 21, 2010 will have the opportunity to address the committee at those sessions.

Dated: June 3, 2010.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2010–14066 Filed 6–11–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0050]

Animal Traceability; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: This is a notice to inform the public of upcoming meetings in Salt Lake City, UT, and Fort Worth, TX, to provide an opportunity for stakeholders to offer their input on the new framework being developed for animal disease traceability. The meetings are being organized by the Animal and Plant Health Inspection Service. Additional meetings are currently being planned and will be announced in a future notice.

DATES: The meetings will be held on June 24 and July 1, 2010, from 8 a.m. to 4 p.m. each day.

ADDRESSES: The public meeting on June 24, 2010, will be held in the Bryce Ballroom, Sheraton Salt Lake City Hotel, 150 West 500 South, Salt Lake City, UT 84101. The public meeting on July 1, 2010, will be held at the Holiday Inn Dallas-Fort Worth Airport South, 14320 Centre Station Drive, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Program Manager, Animal Disease Traceability, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737-1231; (301) 734-5571.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture (USDA) is currently developing a new, flexible framework for animal disease traceability in the United States. In keeping with its commitment to partnering with States, Tribal Nations, and industry to address many of the details of the infrastructure of this program, including possible regulations, the USDA took the initial step of hosting a State/Tribal forum on animal disease traceability in Kansas City, MO, on March 18 and 19, 2010. Information on the proceedings of the State/Tribal forum is available to the public for review and comment at (*http://www.aphis.usda.gov/traceability/forum/index.shtml*). In addition, we hosted three public meetings to discuss animal disease traceability. The meetings took place in Kansas City, MO, Riverdale, MD, and Denver, CO, on May 11, May 13, and May 17, 2010, respectively. We are now planning to host two additional public meetings, which will take place in Salt Lake City, UT, on June 24, 2010, and Fort Worth, TX, on July 1, 2010 (see **ADDRESSES**).

Tentative topics to be discussed at the upcoming meetings include:

1. The framework for a proposed animal disease traceability rule.

2. Specific details that would help form the animal disease traceability rule.

Written statements on meeting topics, as well as on the proceedings of the March 2010 State/Tribal forum, may be filed with the USDA through July 30, 2010, via the Federal eRulemaking Portal at (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0050*) or by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS-2010-0050 when submitting your statements.

For the meeting at the Sheraton Salt Lake City Hotel, there will be complimentary parking, as well as shuttle service to and from Salt Lake International Airport.

Done in Washington, DC, this 9th day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–14245 Filed 6–11–10; 12:36 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

National Telecommunications and Information Administration; Copyright Policy, Creativity, and Innovation in the Information Economy

AGENCY: United States Patent and Trademark Office, U.S. Department of Commerce; and National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The United States Patent and Trademark Office (USPTO) and the National Telecommunications and Information Administration (NTIA), on behalf of the U.S. Department of Commerce (Department), will hold a public meeting on July 1, 2010, to discuss the relationship of copyright policy, creativity, and innovation in the Internet economy.

DATES: The meeting will be held on July 1, 2010, from 8:30 a.m. to 4:45 p.m., Eastern Daylight Time. Registration will begin at 8 a.m.

ADDRESSES: The meeting will be held in the Polaris Room of the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004. All major entrances to the building are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact Velica Steadman at *velica.steadman@uspto.gov,* (571) 272–9300; or Ian Martinez at *imartinez@ntia.doc.gov,* (202) 482–3027.

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of both intellectual property and the Internet to U.S. creativity and innovation, the Department has made it a top priority to ensure that both remain vehicles for these important purposes. The Department has assembled an Internet Policy Task Force (Task Force) whose mission is to identify leading public policy and operational challenges in the Internet environment, including challenges associated with protecting the legal rights of inventors and creators. The Task Force leverages expertise across many bureaus, including those responsible for domestic and international information and communications technology policy, international trade, cybersecurity standards and best practices, intellectual property rights, business advocacy and export control.

As part of the Task Force agenda, USPTO and NTIA are conducting a comprehensive review of the relationship of copyright policy, creativity, and innovation in the Internet economy which will include issuing a notice of inquiry. To facilitate this review, on July 1, 2010, USPTO and NTIA will hold a public meeting to discuss stakeholder views and to encourage public discussion of online copyright policy in the United States. The event will seek participation and comment from all interested stakeholders, including the commercial, rightsholder, academic, and civil society sectors, on the impact of current copyright laws, the common and emerging techniques used to illegally distribute and obtain protected works, and the extent of infringement and effects on creativity and innovation in relevant technologies. The agencies will explore the changing nature of infringement and whether those changes suggest gaps in copyright law. Similarly, the agencies invite discussion of the changing impact of copyright law on individual rights. The review will also seek to develop a deeper understanding of the relationship of current copyright laws to consumer welfare, job creation, international trade, and fundamental democratic values. The review is being coordinated with the office of the Intellectual Property Enforcement Coordinator in the Office of Management and Budget, Executive Office of the President.

The agenda for the public meeting will be available at least one week prior to the meeting and the meeting will be webcast. The agenda and webcast information will be available on the Internet Policy Task Force Web site, *http://www.ntia.doc.gov/internetpolicytaskforce/* and the USPTO's Web site, *http://www.uspto.gov.* David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, will deliver remarks, as will Lawrence E. Strickling, Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration. Other U.S. Government officials will also participate.

The meeting will be open to members of the public on a first-come, first-served basis. To pre-register for the meeting, please send a request to Velica Steadman at *velica.steadman@uspto.gov,* indicating your name, organizational affiliation, mailing address, telephone, and email address. The meeting will be physically accessible to people with disabilities. Individuals requiring accomodation, such as sign language interpretation or other ancillary aids, should communicate their needs to Velica Steadman at *velica.steadman@uspto.gov,* or Ian Martinez at *ian.martinez@ntia.doc.gov* at least five(5) days prior to the meeting. Attendees should arrive at least one-half hour prior to the start of the meeting and must present a valid, government-issued photo identification upon arrival. Persons who have pre-registered (and received confirmation) will have seating held until 15 minutes before the program begins. Members of the public will have an opportunity to ask questions at the meeting.

Dated: June 8, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Lawrence E. Strickling,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 2010–14143 Filed 6–11–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW93

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will hold a meeting of its Ad Hoc Regulatory Deeming Workgroup (Workgroup). The meeting is open to the public.

DATES: The Workgroup meeting will be held Wednesday, June 30, 2010, from 8 a.m. until business for the day is completed and Thursday, July 1, 2010 from 8 a.m. until business for the day is completed.

ADDRESSES: The Workgroup meeting will be held at the Hotel Deca, 4507 Brooklyn Avenue, Seattle WA 98105, in the College Room; telephone: 1–800–899–0251

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer; telephone: 503-820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Workgroup meeting is to review the draft regulations that would implement Amendment 20 (Trawl Rationalization) to the groundfish fishery management plan, if it is approved.

Although non-emergency issues not contained in the meeting agenda may come before the Workgroup for discussion, those issues may not be the subject of formal Workgroup action during this meeting. Workgroup action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(a) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Workgroup intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: June 9, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–14154 Filed 6–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW92

Endangered Species; File Nos. 14508 and 14655

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that Inwater Research Group, Inc. [Permit no. 14508, Principal Investigator, Michael Bresette] Jensen Beach, FL and Jane Provancha [Permit No. 14655], Cape Canaveral, FL have been issued permits to take take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On July 31, 2009 and September 29, 2009, notice was published in the **Federal Register** (74 FR 38169 and 74 FR 49851) that requests for scientific research permits had been submitted by the above-named applicants. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 14508: The purpose of the research is to continue to collect long-term data on species comparison, size frequencies, disease rates, seasonal abundance, genetic origin and feeding ecology of sea turtles using Lake Worth Lagoon in Palm Beach County, Florida. Up to 50 green, 5 loggerhead, 2 hawksbill, and 1 Kemp's ridley sea turtles may be captured annually. Turtles may be flipper and passive integrated transponder tagged, blood and tissue sampled, measured, photographed, and weighed. A subset of green sea turtles may be lavaged. The permit is issued for five years.

File No. 14655: The Permit Holder will continue to monitor the abundance and distribution of sea turtles in the waters of Mosquito Lagoon in Volusia and Brevard Counties, Florida. Up to 40 green, 40 loggerhead, and 1 Kemp's ridley sea turtles may be captured, flipper and PIT tagged, blood sampled and/or tissue biopsied, lavaged, and released annually. Up to 12 green and 10 loggerhead turtles may be tracked using a sonic transmitter. The permit is issued for five years.

Issuance of these permits, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 8, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–14247 Filed 6–11–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on welded carbon steel standard pipes and tubes from India. This review covers nine exporters/producers. The period of review (POR) is May 1, 2008, through April 30, 2009.

We have preliminarily found that sales of the subject merchandise have been made at prices below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days after the date of publication of this notice.

DATES: *Effective Date:* June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0198 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1986, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on certain welded carbon steel standard pipes and tubes (pipes and tubes) from India. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986). On May 1, 2009, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 20278 (May 1, 2009). On June 24, 2009, in response to a request from the Wheatland Tube Company (the petitioner) and in accordance with 19 CFR 351.213(g) and 19 CFR 351.221(b)(1), we published a notice of initiation of an administrative review with respect to 10 companies.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). We are conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

We received a letter from the petitioner withdrawing its request for review of the order with respect to Jindal Industries Ltd. (Jindal). Because we received no other requests for review of Jindal, pursuant to 19 CFR 351.213(d)(1), we rescinded the review in part with respect to pipes and tubes from India produced and/or exported by Jindal. *See Certain Welded Carbon Steel Standard Pipes and Tubes From India: Rescission of Antidumping Duty Administrative Review in Part*, 74 FR 55817 (October 29, 2009).

Since initiation of the review, we extended the due date for completion of these preliminary results from January 31, 2010, to May 3, 2010. *See Extension of Time Limit for Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 68586 (December 28, 2009).

As explained in the February 12, 2010, memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll Import Administration deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, the deadline in this segment of the proceeding was extended by seven days. This revised deadline for the preliminary results of this administrative review was May 10, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

On May 4, 2010, in accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results by an additional 28 days from the revised due date of May 10, 2010, to June 7, 2010. *See Certain Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 23672 (May 4, 2010).

Scope of the Order

The products covered by the order include certain welded carbon steel standard pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A–53, A–120, or A–135.

The antidumping duty order on certain welded carbon steel standard pipes and tubes from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by *Tariff Schedules of the United States, Annotated* (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). *See, e.g., Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews*, 56 FR 26650, 26651 (June 10, 1991). As a result of this transition, the scope language we used in the 1991 **Federal Register** notice is slightly different from the scope language of the original final determination and antidumping duty order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Selection of Respondents

Due to the large number of firms for which a review was requested and the resulting administrative burden to examine each company for which a request was made, the Department exercised its authority to limit the number of respondents selected for individual examination. Where it is not practicable to individually examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be examined reasonably. Accordingly, on July 28, 2009, after considering our resources, we determined that it was not practicable to examine all ten exporters/producers of subject merchandise for which a review was requested. See Memorandum entitled "Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India Respondent Selection" dated July 28, 2009. As a result, we selected the two largest producers/exporters of pipes and tubes from India during the POR (*i.e.*, Lloyds Metals & Engineers Ltd. (LMEL) and Jindal) for individual examination in this segment of the proceeding.

As explained above, after our selection of Jindal for individual examination, we rescinded the review in part with respect to Jindal because the sole request for such a review was withdrawn.

No–Knowledge/No–Shipments Respondents

Subsequent to the initiation of the review, Makalu Trading Pvt. Ltd. (Makalu), Uttam Galva Steels Ltd. (Uttam), and Ushdev International Ltd. (Ushdev) stated that, although individually acting as resellers of subject pipe and tube, each had only one (and the same) supplier which had

[1] We initiated the review on the following companies: Lloyds Metals and Engineers Limited, Lloyds Steel Industries Limited, Jindal Industries Ltd., Maharashtra Seamless Limited, Jindal Pipes Limited, Makalu Trading Pvt. Ltd., Ratnamani Metals Tubes Ltd., Universal Tube and Plastic Ind., Ushdev International Ltd., and Uttam Galva Steels Ltd.

knowledge that all sales by these resellers of subject merchandise were destined for the United States. See letter from LMEL containing responses from Makalu, Ushdev, and Uttam dated March 25, 2010. In fact, according to the March 25 submission, the producer had knowledge because it had concluded the sale with the U.S. customer on its own.

In accordance with our practice, the supplier is the proper party to review because the supplier's sale to the unaffiliated trading companies is the point in the sales chain at which merchandise "is first sold (or agreed to be sold), before the date of importation, by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States " See section 772(a) of the Act and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Resuls of Antidumping Duty Administrative Review*, 56 FR 31692, 31747 (July 11, 1991), at Section 18, Comment 30. Because the producers knew that the merchandise they sold was destined for the United States, we find that Makalu, Utam, and Ushdev did not have shipments of their own subject to this review.

On July 16, 2009, the Department received a letter from Universal Tube and Plastic Ind. (UTP) indicating that it made no shipments from India to the United States and that it was not an Indian producer of subject merchandise. We have not received any comments on UTP's submission. We confirmed UTP's claim of no shipments by issuing a no–shipments inquiry to CBP and by reviewing electronic CBP data. See Letter to Wheatland Tube Company soliciting comments on CBP data, dated June 29, 2009, in which we enclosed CBP entry data for the companies subject to this review (CBP entry data).

In its January 14, 2010, submission at 2, Lloyds Steel Industries Ltd. (LSIL) (responding concurrently with LMEL) stated that it never produced pipe for the open market. We confirmed LSIL's claim of no shipments by issuing a no–shipments inquiry to CBP and by reviewing electronic CBP data. See CBP entry data.

With regard to the absence of shipments by UTP and LSIL, our practice following implementation of the 1997 regulations concerning no–shipment respondents was to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR. See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27393 (May 19, 1997) (implementing the 1997 regulations), and *Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 53161, 53162 (September 7, 2005), unchanged in *Oil Country Tubular Goods from Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 95 (January 3, 2006). As a result, in such circumstances, we would normally instruct CBP to liquidate any entries from the no–shipment company at the deposit rate in effect on the date of entry.

In our May 6, 2003, automatic–assessment clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all–others rate applicable to the proceeding. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*).

Because "as entered" liquidation instructions under our earlier practice concerning no–shipment respondents do not alleviate the concerns which the May 2003 clarification was intended to address, we find it appropriate in this case to instruct CBP to liquidate any entries during the POR of merchandise produced by UTP or LSIL and exported by other parties at the all–others rate should we continue to find at the time of our final results that UTP and LSIL had no shipments of subject merchandise from India. See *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26933 (May 13, 2010). See also *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008). In addition, the Department finds that it is more consistent with the May 2003 clarification not to rescind the review in part in these circumstances but, rather, to complete the review with respect to Makalu, Utam, Ushdev, UTP, and LSIL and issue instructions to CBP to liquidate entries at the rate applicable to the producer or the all–others rate, as appropriate. See the "*Assessment Rates*" section of this notice below.

Duty Absorption

On July 22, 2009, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR by the companies under review. Section 751(a)(4) of the Act and 19 CFR 351.213(j) provide for the Department to determine, if requested, during an administrative review initiated between the first and second or third and fourth anniversary of the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer.

We find that the petitioner's request is misplaced. The Court of Appeals for the Federal Circuit found that the Department lacks authority to conduct two- and four-year duty–absorption inquiries for reviews of transitional orders (orders in effect before January 1, 1995). See *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 819 (Fed. Cir. 2002). Because the order for this case went into effect in 1986, we have not conducted a duty–absorption inquiry in this segment of the proceeding.

Decisions Regarding Affiliation and Collapsing

LMEL produced subject merchandise in its pipe and tube manufacturing facility at Murbad during the POR until November 1, 2008. As of November 1, 2008, the manufacturing facility was "de–merged" and the ownership was transferred to a new company, Lloyds Line Pipe Ltd. (LLPL). As a result, as of November 1, 2008, LMEL no longer produced subject merchandise but sold subject merchandise produced by LLPL under the LMEL brand name.

We have determined that LMEL and LLPL are affiliated under sections 771(33)(E) and (F) of the Act and 19 CFR 351.102(b)(3). We have determined that three family members are affiliated and are jointly in a position to control LMEL and LLPL. Because the respondent has claimed business–proprietary treatment of the information we have examined see Memorandum entitled "Certain Welded Carbon Steel Standard Pipes and Tubes From India Affiliation and Whether to Collapse Two Separate Entities" dated June 7, 2010 (Affiliation Memo). As a result of our analysis and pursuant to section 771(33)(F) of the Act and 19 CFR 351.102(b)(3), we find that LMEL, LLPL and LSIL are affiliated. For a detailed discussion of our treatment of these companies with respect to affiliation and collapsing see Affiliation Memo.

Additionally, we have determined that LMEL and LLPL should be collapsed and treated as a single entity for antidumping–duty purposes but that LSIL should not be collapsed with LMEL/LLPL. LLPL produced the subject merchandise which LMEL sold after November 1, 2008. Based on these facts as well as the ownership and joint–management control of LMEL and LLPL, we find there is a significant potential for manipulation of price and production of the subject merchandise between these two companies. In such circumstance, we find it appropriate to treat these companies as a single entity. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

With respect to LSIL, a production company affiliated with LMEL/LLPL, pursuant to 19 CFR 351.401(f)(1) we find that substantial retooling of LSIL's facilities would be necessary for it to restructure its manufacturing priorities in order to produce any diameter of foreign like product or subject merchandise in quantities of any significance. Currently, LSIL only has the ability to manufacture a very limited range of diameters of merchandise under consideration and only with tooling that is not dedicated to the purpose. LMEL did not produce any merchandise under consideration in the limited range that LSIL could produce. When LSIL needed foreign like product for internal consumption during the POR it purchased it from LMEL/LLPL. LSIL is not involved in the sale of subject merchandise on the open market. For these reasons, we preliminarily determine to treat LMEL/LLPL and LSIL as separate entities, in accordance with 19 CFR 351.401(f)(1). For a detailed discussion of our treatment of these companies with respect to affiliation and collapsing, see Affiliation Memo.

Because we have not collapsed LMEL/LLPL and LSIL into a single entity for these preliminary results, we have continued to value the hot–rolled coil that LMEL/LLPL purchases from LSIL as a factor of its production subject to the major–input rule under section 773(f)(3) of the Act. See Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results Lloyds Metals and Engineers Limited and Lloyds Line Pipe Limited" (June 7, 2010) (Cost Calculation Memo).

Verification

As provided in section 782(i) of the Act, we have verified sales information and certain cost information directly related to selling, general, and administrative expenses (SG&A) and constructed–value (CV) profit provided by LMEL using standard verification procedures, including on–site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the Memorandum to the File entitled "Verification of the Sales Response of Lloyds Metals and Engineers Limited in the May 1, 2008, through April 30, 2009, Administrative Review of Certain Welded Carbon Steel Standard Pipes and Tubes from India" (June 7, 2010) (Verification Report), which is on file in the Central Records Unit, room 1117 of the main Commerce building.

Date of Sale

The Department's regulations at 19 CFR 351.401(i) state that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a long–standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

With respect to LMEL's sales to the United States, Indian law requires that all merchandise be accompanied by an invoice when it leaves the factory. A commercial invoice follows the factory invoice at a later date. We have preliminarily determined that the material terms of sale are set on the date of shipment from the factory because shipment occurs at the same time as or before the invoice date (factory invoice or commercial invoice, as applicable). See Memorandum to the File "Certain Welded Carbon Steel Standard Pipes and Tubes From India: Lloyds Metals & Engineers Limited Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order (5/1/08 - 4/30/09)" (June 7, 2010) (Analysis Memo).

Fair–Value Comparisons

To determine whether sales of the subject merchandise sold by LMEL and exported to the United States were made at less than normal value, we compared export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

We based the United States price on export price, as defined in section 772(a) of the Act, because the merchandise was sold directly by the respondent to unaffiliated U.S. purchasers prior to importation or sold to unaffiliated purchasers in India for exportation to the United States and constructed export price was not otherwise indicated by the facts of record.

We calculated export price based on packed, forwarding agent's certificate of receipt, Cost and Freight, or Cost, Insurance, and Freight prices to the first unaffiliated customer in the United States or an unaffiliated Indian trading company. We made deductions, where applicable, for brokerage and handling expenses, freight expenses, and other direct selling expenses in accordance with section 772(c)(2) of the Act.

LMEL used the U.S. prime lending rate in its calculation of imputed credit expense. We replaced the U.S. prime lending rate with the short–term interest rate calculated in accordance with our practice. See *Policy Bulletin 98.2 Imputed Credit Expenses and Interest Rates* dated February 23, 1998, available at http://ia.ita.doc.gov. We calculated a simple average of the quarterly statistic (where all sample statistics were for five days) of "All C&I Loans 31 365 days" from the Federal Reserve Statistical Release E2 Survey of Business Lending. We recalculated imputed credit expense for LMEL's direct sales to the United States for the appropriate period from factory–invoice date (date of sale) to payment date with an interest rate that is in accordance with our practice. Additionally, we disregarded LMEL's reported imputed–credit expense for sales through trading companies

because there is no definable period for which LMEL extended credit to its customer, the Indian trading company. See Analysis Memo.

With respect to one sale to an Indian trading company, in its May 14, 2010, U.S. sales database, LMEL reported information regarding this sale based on a post–delivery (to the final U.S. customer) renegotiation of price due to a warranty claim. In the original questionnaire we instructed LMEL to report price adjustments and warranty expenses separately from prices reflected in the agreement of sale. In other cases where LMEL granted credits to its customers based on warranty redemptions, it reported its price information in accordance with the Department's instructions. For the sale in question, we have replaced the information LMEL reported in its U.S. sales database with information in the Verification Report that identifies the correct contract date, date of sale, and gross price in the local currency. Additionally, we have adjusted the total warranty–expense calculation to reflect the credit that LMEL granted on the sale in question. This affects the warranty–expense allocation for all sales. See Analysis Memo.

Normal Value

After testing comparison–market viability, we calculated normal value as stated in the "Constructed Value" section of this notice.

1. Comparison–Market Viability

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or third country to serve as a viable basis for calculating normal value, we compared the respondent's volume of home–market and third–country sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. LMEL's aggregate volume of sales of foreign like product in its home market was not greater than five percent of its sales of subject merchandise to the United States. Therefore, this market is not viable as a comparison market. LMEL's sales of foreign like product to one third–country market were greater than five percent of its sales of subject merchandise to the United States. Therefore, this market is viable as a comparison market.

Upon analysis of LMEL's viable third–country market, we determined that all sales to this market were of non–prime merchandise and as such are not contemporaneous sales of comparable merchandise to LMEL's sales of subject merchandise in the United States that consisted of all prime merchandise. See *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 13. Pursuant to sections 773(a)(4) and (e) of the Act and 19 CFR 351.405(a), we may determine normal value by constructing a value based on the cost of manufacture (COM), SG&A, and profit where there are no contemporaneous sales of comparable merchandise in the comparison market. See Memorandum entitled "Certain Welded Carbon Steel Standard Pipes and Tubes From India Normal Value" dated April 19, 2010.

2. Cost–Averaging Methodology

The Department's normal practice is to calculate an annual weighted–average cost for the POR. See, *e.g., Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted–average cost for the entire period). We recognize that possible distortions may result if we use our normal annual–average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted–average cost, we evaluate the case–specific record evidence using two primary factors: (1) the change in the COM recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production (COP) or CV during the same shorter averaging periods. See, e.g., *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSS from Mexico*), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4 (*SSPC from Belgium*).

We requested that LMEL provide pertinent information for Grade A control numbers with the five highest volumes sold in the United States over the twelve months of the POR. LMEL provided this information in its April 29, 2010, response.

3. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low- quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual–cost approach. See *SSPC from Belgium* at Comment 4. In the instant case, record evidence shows that LMEL experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR for two product grades that use the same input grade of hot–rolled coil, *i.e.*, Grade A hot–rolled coil. LMEL sold three product grades of subject merchandise to the United States. This change in COM for Grade A hot–rolled coil is attributable primarily to the price volatility for this single type of hot–rolled coil used in the manufacture of two product grades. Hot–rolled coil is the only major input consumed in the production of certain welded carbon steel standard pipes and tubes. See Cost Calculation Memo. We found that prices for hot–rolled coil changed significantly throughout the POR and, as a result, directly affected the cost of the material inputs consumed by LMEL. See Cost Calculation Memo. Specifically, the record data show that the percentage difference between the high and the low quarterly COM clearly exceeded the 25–percent threshold for all five of the Grade A control numbers with the highest volume sold in the United States during the POR. See Cost Calculation Memo.

4. Linkage between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR. The Department's definition of "linkage" does not require direct traceability between specific sales and their specific production costs but, rather, relies on whether there are elements that would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. See *SSPC from Belgium* at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR, we compared weighted–average quarterly prices to the corresponding quarterly COM for the five Grade A control numbers with the highest volume of sales to the United States. After reviewing this information and determining that there is a trend of sales and costs for the vast majority of the quarters, we preliminarily determine that there is linkage between LMEL's changing costs and sales prices during the POR. See Cost Calculation Memo. See, *e.g., SSSS from Mexico* at Comment 6 and *SSPC from Belgium* at Comment 4.

Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that a quarterly costing approach leads to more appropriate comparisons in our antidumping duty calculation for LMEL concerning two of its three product grades.

5. Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. We relied on the respondent's submitted materials and fabrication costs, general and administrative (G&A) expenses, and U.S. packing costs. We made the following adjustments to the reported CV information:

a. We recalculated LMEL's claimed adjustment factor for hot–rolled coil, which accounts for yield loss, scrap offsets, and the conversion of actual to theoretical quantities, to use a denominator that is on the same basis as the per–unit coil cost to which the rate is applied.

b. We revised the byproduct offset claimed for metal scrap sold to affiliated parties to reflect an arm's–length value in accordance with the transactions–disregarded rule in section 773(f)(2) of the Act.

c. We revised the reported G&A expense rate to reflect the rate obtained at the sales verification. See Verification Report. Additionally, we adjusted the total G&A expenses to include the cost–of-sales items identified as G&A expenses and to exclude foreign–exchange losses and home–market selling expenses. We also adjusted the denominator of the rate to exclude G&A and packing expenses and to include scrap offsets.

d. We revised the financial–expense rate to reflect the rate obtained at the sales verification. Additionally, we adjusted the net financial expenses to include foreign–exchange gains and losses. We also adjusted the denominator of the calculation to exclude G&A and packing expenses and to include scrap offsets.

e. We find that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to products sold but not produced during the POR. For the preliminary results, pursuant to section 776(a)(1) of the Act, we have used the cost for the most similar product as facts available.

We calculated selling expenses and profit in accordance with section 773(e)(2)(B)(i) of the Act, as detailed in the Cost Calculation Memo. Because we determined for purposes of these preliminary results that LMEL does not have a viable home market, we could not determine selling expenses and profit concerning home–market sales under section 773(e)(2)(A) of the Act. Although LMEL has a viable third–country market, we do not have such information for sales to that market because we are not investigating whether LMEL made sales at below–cost prices in that market. Therefore, we relied on section 773(e)(2)(B) of the Act to determine these selling expenses and profit. Specifically, we used the selling–expense and profit rates derived from LMEL's home–market sales of line pipe, merchandise that is within the same general category of products as the subject merchandise. See Cost Calculation Memo. The statute does not establish a hierarchy for selecting among the alternative methodologies provided in section 773(e)(2)(B) of the Act for determining selling expenses and profit. See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1, at 840 (1994). Alternative (i) of section 773(e)(2)(B) of the Act specifies that selling expenses and profit may be calculated based on "actual amounts incurred by the specific exporter or producer * * * on merchandise in the same general category" as the subject merchandise. Therefore, we calculated LMEL's selling expenses and profit based on alternative (i) of section 773(e)(2)(B) of the Act, which is to use the respondent's expenses on sales of merchandise in the same general category, *i.e.*, LMEL's home–market sales of line pipe.

Currency Conversion

Pursuant to 19 CFR 351.415, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the relevant U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted–average dumping margins on certain welded carbon steel standard pipes and tubes from India exist for the period May 1, 2008, through April 30, 2009:

Manufacturer/Exporter	Margin (percent)
Lloyds Metals & Engineers Limited (LMEL)/ Lloyds Line Pipe Ltd. (LLPL)	10.29
Lloyds Steel Industries Limited (LSIL)	*
Jindal Pipes Limited	10.29
Maharashtra Seamless Limited	10.29
Makalu Trading Pvt. Ltd.	**
Ratnamani Metals Tubes Ltd.	10.29
Universal Tube and Plastic Ind.	*
Ushdev International Ltd.	**
Uttam Galva Steels Ltd	**

* No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

** No shipments or sales subject to this review. This company reported that its supplier had knowledge that its merchandise was destined for the United States.

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. See 19 CFR

351.310. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing the case brief. See 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

For these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and export price) for LMEL/LLPL's importers or customers by the total number of metric tons LMEL/LLPL sold to the importer or customer. We will direct CBP to assess the resulting per–metric-ton dollar amount against each metric ton of merchandise in each importer's/customer's entries during the review period. Additionally, because we have collapsed LMEL and LLPL, we will instruct CBP to liquidate entries of LLPL–produced merchandise at the LMEL/LLPL rate.

The Department clarified its automatic–assessment regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by LMEL for which LMEL did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by LMEL at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

Consistent with *Assessment of Antidumping Duties*, for companies which claimed they had no shipments of subject merchandise to the United States, *i.e.*, LSIL and UTP, if there are any entries of subject merchandise produced by these entities into the United States, we will instruct CBP to liquidate the unreviewed entries of merchandise at the all–others rate.

With respect to entries by companies that were not selected for individual examination, *i.e.*, Jindal Pipes Limited, Maharashtra Seamless Limited and Ratnamani Metals Tubes Ltd., we will instruct CBP to liquidate entries of merchandise produced and/or exported by these firms at the rate established for LMEL/LLPL.

For companies which reported that their supplier (LMEL) had knowledge that its merchandise was destined for the United States, *i.e.*, Makalu, Uttam, and Ushdev, and otherwise had no shipments or sales of their own, we will instruct CBP to liquidate these entries at the rate applicable to LMEL/LLPL.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of certain welded carbon steel standard pipes and tubes from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for companies under review will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be the all–others rate for this proceeding, 7.08 percent. See *Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14278 Filed 6–11–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2010–0030]

Request for Comments on Proposed Changes to Restriction Practice in Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: In situations in which two or more independent and distinct inventions are claimed in a single patent application, the United States Patent and Trademark Office (Office) is authorized by the patent laws and implementing regulations to require the applicant to restrict the application to one invention. The practice for requiring an applicant to restrict an application to one invention in such situations is known as restriction practice. The Office is considering changes to restriction practice to improve the quality and consistency of restriction requirements made by Office personnel.

Comment Deadline Date: Written comments must be received on or before August 13, 2010. No public hearing will be held.

ADDRESSES: Written comments should be sent by electronic mail message over the Internet addressed to *Restriction_Comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Linda S. Therkorn. Although comments may be submitted by mail, the Office prefers to receive comments via the Internet.

The written comments will be available for public inspection at the

Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office's Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Linda S. Therkorn, Office of the Associate Commissioner for Patent Examination Policy, directly by telephone to (571) 272–7837, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The Office is authorized by the patent laws (35 U.S.C. 121) and regulations (37 CFR 1.141 *et seq.*) to require an applicant to restrict an application to one invention if two or more independent and distinct inventions are claimed in the application. Chapter 800 of the Manual of Patent Examining Procedure (MPEP) sets forth the Office's practices for reviewing applications for restriction purposes. The Office is considering revising restriction practice to improve the quality and consistency of restriction requirements.

The Office is seeking suggestions from the public regarding possible changes to restriction practice because this is a significant area of concern for the Office, applicants, and the public. Thus, the Office is soliciting comments from the public concerning several aspects of restriction practice. First, the Office is asking for comments on what should be included in an Office action that sets forth a restriction requirement. Second, because unwarranted restriction requirements can result in delays in prosecution, expenditure of excess claim fees, and/or the need to file multiple divisional applications, the Office is inviting suggestions from the public as to how to improve the process for traversing or requesting reconsideration of a restriction requirement to achieve more consistent, accurate, timely, and cost-effective review. Third, the Office is aware that restriction requirements between related product inventions or related process inventions have been problematic, and thus is inviting public comments on the changes under consideration to clarify what is necessary in order to restrict between such inventions. Fourth, the Office is also considering some changes with regard to restrictions involving claims with Markush groupings, and invites public comment on these changes as well as any other suggestions regarding the treatment of Markush claims. Fifth, the Office is considering changes to rejoinder practice in an effort to simplify what claimed inventions would be eligible for rejoinder upon the determination that all elected claims are allowable, and invites public comments on these changes. Finally, the Office invites comments specifically pointing out other areas in which restriction practice could be improved.

The Office has previously recognized the need to consider changes to restriction practice. Pursuant to the Office's 21st Century Strategic Plan, the Office sought public comment on a number of issues to help guide the scope and content of a study of changes that would be needed to implement a Patent Cooperation Treaty (PCT) style "Unity of Invention" standard in the United States. *See Notice of Availability of and Request for Comments on Green Paper Concerning Restriction Practice,* 70 FR 32761 (June 6, 2005). The public comments suggested broadening the scope of the study beyond just a PCT-style Unity of Invention standard in an effort to determine the best practice for restriction. Based on the public comments, the Office identified four options for modifying restriction practice. The Office studied the ease of implementation and workload/pendency impacts of these four options in an effort to achieve an appropriate balance between the priorities of the USPTO user community and limited USPTO resources. However, after reviewing the business case analyses, the Office determined that none of the options would satisfactorily achieve the desired balance.

Thereafter, as part of its ongoing efforts to enhance patent quality and reduce pendency in accordance with the 21st Century Strategic Plan, the Office published a notice proposing to change certain rules of practice pertaining to claims that use Markush or other alternative language and requested public comment on the proposed changes to the rules of practice. *See Examination of Patent Applications That Include Claims Containing Alternative Language,* 72 FR 44992 (Aug. 10, 2007), 1322 *Off. Gaz. Pat. Office* 22 (Sept. 4, 2007). The Office is not issuing a final rule based upon the changes proposed in that previous rule making notice. The Office is instead publishing this notice to seek input from the public concerning restriction practice.

As discussed previously, the Office is considering changes to Office practice and policy with regard to restriction requirements. The Office is requesting public input on restriction practice. The Office is not presently proposing any changes to the rules pertaining to restriction practice, and this notice is not a notice of proposed rule making.

1. *What should be included in an Office action that sets forth a restriction requirement?* The MPEP currently explains that two criteria must be met to require restriction between patentably distinct inventions, *i.e.,* the inventions must be independent or distinct as claimed, and there must be a serious burden on the examiner if restriction is not required. *See* MPEP § 803. The Office is considering clarifying the MPEP to indicate that a restriction requirement (including an election of species requirement) must always set forth the reasons why the inventions are independent or distinct and why there would be a serious burden in the absence of a restriction requirement.

The Office is considering changes to the burden requirement, an area fundamental to restriction practice. The rationales set forth in the current MPEP to support the burden prong are based on the prior art search (*i.e.,* the inventions have acquired a separate status in the art in view of their different classification; the inventions have acquired a separate status in the art due to their recognized divergent subject matter; and the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries)). *See* MPEP § 808.02. The Office is considering whether to revise the MPEP to indicate that there would be a serious burden if restriction is not required when the prior art applicable to one invention would not likely be applicable to another invention (*e.g.,* because of a different field of art or different effective filing date).

The Office is also considering whether to revise the MPEP to specify that "a serious burden on the examiner" encompasses search burden and/or examination burden. Typically, the burden prong has been viewed as referring to the burden imposed by searching for patentably distinct inventions. However, the determination of whether a claimed invention is allowable requires both a search of the prior art and an examination of the application to determine whether the claimed invention meets the statutory requirements for patentability. The burden imposed by the examination of patentably distinct inventions is, in many cases, as serious as the burden imposed by searching for such inventions. Therefore, the Office is considering explaining that in addition

to the rationales currently set forth in the MPEP, a serious burden in support of a restriction requirement may be based on the rationale that the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph. In this situation, a serious search burden and/or examination burden may exist where issues relevant to one invention are not relevant to the other invention.

The MPEP currently provides for election of species practice when an application includes a generic claim along with separate claims to different species that fall within the scope of that generic claim and that may be patentably distinct. *See* MPEP § 806.04. The Office is considering revising the MPEP to indicate that in setting forth the species from which an applicant is required to elect, the examiner should group together species that are not patentably distinct from each other, the examiner should require election of either a single species or a single grouping of patentably indistinct species, and the applicant should not be required to elect a specific species within a grouping of patentably indistinct species.

2. *What practice changes would result in more effective ways to seek higher level review of restriction requirements?* In various forums, members of the public have expressed overall dissatisfaction with the effectiveness of traversing or requesting reconsideration of requirements for restriction. Unwarranted restriction requirements can result in delays in prosecution, expenditure of excess claim fees, and/or the need to file multiple divisional applications to avoid dedication of unclaimed subject matter to the public. The Office invites suggestions from the public as to how to improve the traversal or request for reconsideration process within the framework of the current rules (*see* 37 CFR 1.143 and 1.144) to achieve more consistent, accurate, timely, and cost-effective review.

3. *How could the Office clarify requirements for restriction between related product inventions or related process inventions where the relationship is not specifically provided for in MPEP Chapter 800?* The Office is considering providing for a new section in the MPEP to address restriction between related product inventions or related process inventions not otherwise provided for in MPEP §§ 806 through 806.05(j). *See, e.g.,* MPEP § 806.04 et seq. for restricting between inventions in a genus/species relationship; MPEP § 806.05(c) for an explanation of the requirements to restrict between inventions in a combination/subcombination relationship; MPEP § 806.05(d) for restricting between subcombinations disclosed as usable together; and MPEP § 806.05(j) for restricting between an intermediate and a final product. Specifically, the Office is considering explaining that to support a requirement for restriction between two or more related product inventions, or between two or more related process inventions, that are not otherwise provided for in MPEP §§ 806 through 806.05(j), there must be two-way distinctness (*see* MPEP § 802.01) and a serious burden if restriction were not required. The Office is considering explaining that for such related product inventions or such related process inventions, the inventions are distinct if: (1) The inventions **as claimed** have mutually exclusive characteristics (*see* MPEP §§ 806 through 806.05(f)); (2) the inventions **as claimed** are not obvious variants over each other; and (3) each invention **as claimed** can be made by, or used in, a materially different process or product. In an effort to reduce the number of improper requirements for restriction between related product inventions or related process inventions, the Office is considering explaining that where claims of an application define the same essential characteristics of a single invention, *e.g.,* the claims vary from each other only in breadth or scope (ranging from broad to detailed), the examiner should not require restriction between such claims.

4. *How could the Office modify Markush practice?* The Office is considering whether to revise Markush practice in three particular ways. First, if the examiner determines that the elected species is allowable, the Office is considering specifying that the examination of the Markush-type claim will be extended to the extent necessary to determine the patentability of the claim, *i.e.,* to determine whether any **nonelected species** is unpatentable for any reason (35 U.S.C. 101, 102, 103, or 112, or nonstatutory double patenting). If a nonelected species is determined to be unpatentable, the Markush-type claim would be rejected, and the search and examination would not be extended to cover all nonelected species.

Next, the Office is considering revising the treatment of amended Markush-type claims to clarify that whether an Office action may be made final is determined by whether the conditions in MPEP § 706.07 for making a second or subsequent Office action final are met and is not dependent upon whether the examiner previously required a provisional election of species.

Lastly, the Office is considering situations where restriction may be proper between a subcombination and a combination when a subcombination sets forth a Markush grouping of alternatives. In particular, the Office is referring to a subcombination that (1) encompasses two or more subcombination embodiments within its scope, and (2) lists those embodiments using Markush-type claim language, *i.e.,* lists the embodiments as a group of alternatives from which a subcombination embodiment is selected. For example, the Office is considering whether restriction would be proper between a subcombination claim to an individual DNA molecule selected from a list of alternative embodiments and a combination claim to an array comprising a plurality of DNA molecules wherein one or more of the DNA molecules are selected from the list of alternative embodiments set forth in the subcombination claim. In such a situation, the combination claim does not require all the elements of any particular claimed subcombination to be present in the claimed array.

Apart from these specific considerations, the Office invites suggestions from the public regarding changes to the practice of requiring election/restriction of Markush claims in a manner that balances the interests of the Office and those of the public in the context of the current statutory and regulatory framework.

5. *How could the Office improve rejoinder practice?* The Office is considering changes to rejoinder practice as part of an effort to institute more uniform treatment of claims directed to nonelected subject matter upon the determination that all claims to the elected invention are allowable. The Office is considering whether to define "rejoinder" as the practice of withdrawing a restriction requirement as between some or all groupings of claims and reinstating certain claims previously withdrawn from consideration that occurs when the following conditions are met: (1) All claims to the elected invention are allowable; and (2) it is readily apparent that all claims to one or more nonelected inventions are allowable for the same reasons that the elected claims are allowable. Claims that meet the second condition for rejoinder may include, for example, those that (1) properly depend from an allowable elected claim; (2) include all of the limitations of an allowable elected claim; or (3) require no further search and/or examination. Claims that may not be eligible for rejoinder would include, for example, those that require

additional consideration of the prior art or raise utility, enablement, or written description issues not considered during examination of the allowable elected claims.

Separately, the Office is also considering instructing examiners that when all claims directed to an elected invention are allowable, nonelected claims must be considered for rejoinder and withdrawal of the restriction requirement. In making this decision, examiners must reevaluate both aspects of the restriction requirement, *i.e.,* whether the nonelected invention(s) as now claimed are independent or distinct from the claim(s) to the allowable elected invention and whether there would be a serious burden if the nonelected inventions were rejoined.

6. *What other areas of restriction practice can the Office improve and how?* While the Office has set forth particular restriction practice issues for which comments are specifically being requested, the Office is in this request for comments inviting comments on any area in which restriction practice could be improved.

Dated: May 17, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–14136 Filed 6–11–10; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 16, 2010; 10 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: June 8, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–14321 Filed 6–10–10; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Correction

AGENCY: Department of Defense, DoD.

ACTION: Notice of advisory committee meeting; correction.

SUMMARY: On June 8, 2010, DoD published a notice (75 FR 32416) announcing a meeting of the Defense Science Board Task Force. In one instance the notice contained irrelevant text. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: LTC Karen Walters at 703–571–0082.

SUPPLEMENTARY INFORMATION: On June 8, 2010, DoD published a notice announcing a meeting of the Defense Science Board Task Force on the Survivability of DoD Systems and Assets to Electromagnetic Pulse (EMP) and other Nuclear Weapons Effects. The meeting will be held July 15 and 16, 2010, at Fort Belvoir, VA. Subsequent to the publication of that notice, DoD discovered that the text contained one instance of irrelevant text. This notice corrects that information.

Correction

In the notice (FR Doc. 2010–13770) published on June 8, 2010 (75 FR 32416), make the following correction. On page 32416, in the second column, correct the first paragraph under **SUPPLEMENTARY INFORMATION** by deleting the following sentence: "At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans."

Dated: June 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14140 Filed 6–11–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Wage Committee

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that the Department of Defense Wage Committee will meet on July 13, 2010, in Rosslyn, Virginia. The meeting is closed to the public.

DATES: The meeting will be held on Tuesday, July 13, 2010, at 10 a.m.

ADDRESSES: The meeting will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meeting meets the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman (*see* **FOR FURTHER INFORMATION CONTACT**) concerning matters believed to be deserving of the Committee's attention.

Dated: June 9, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–14197 Filed 6–11–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Local Redevelopment Authority and Available Surplus Buildings and Land at Air Force Research Labs (AFRL) Mesa, Located in Maricopa County, AZ

SUMMARY: This notice provides information regarding the surplus property at AFRL Mesa in Maricopa County, Arizona and information about

the local redevelopment authority that has been established to plan the reuse of the AFRL Mesa property. The property is located within the former Williams Air Force Base property adjacent to the Phoenix-Mesa-Gateway Airport and the Arizona State University Polytechnic Campus. The property is accessible from Sossaman Road south of Highway 60.

Point of Contact: For further information regarding the property contact Mr. Philip H. Mook, Senior Representative, Air Force Real Property Agency, 3411 Olson Street, McClellan, CA 95652–1003, telephone (916) 643–6420, ext 100, or Ms. Debra Bahr, Realty Specialist, Air Force Real Property Agency, 2261 Hughes Ave, Ste. 121, Lackland AFB, TX 78236, telephone (210) 395–9487.

SUPPLEMENTARY INFORMATION: This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 501 *et seq.*) and the Defense Base Closure and Realignment Act of 1990 as amended (Pub. L. 101–510).

Notice of Surplus Property: Pursuant to paragraph (7)(B) of section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the National Defense Authorization Act of 2005 (Pub. L. 108–375), the following information regarding the surplus property is described herein.

Local Redevelopment Authority: The local redevelopment authority for the AFRL Mesa property, Mesa, AZ for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, as designated by the Office of Economic Adjustment is the City of Mesa. All inquiries should be addressed to Mr. Patrick Murphy, Project Manager for the City of Mesa Department of Economic Development, 20 E. Main Street, Suite 200, Mesa, AZ 85211–1466, telephone (480) 644–3964.

Surplus Property Description

Land: The property consists of approximately 8 acres of land.

Buildings/Structures: The property consists of 10 buildings with associated utility infrastructure.

Expressions of Interest: Pursuant to paragraph (7)(C) of Section 2905(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the National Defense Authorization Act of 2005 (Pub. L. 108–375), state and local governments, representatives of the homeless, and other interested parties located in the vicinity of the AFRL Mesa property, Mesa, AZ, shall submit to the City of Mesa Department of Economic Development, P.O. Box 1466, Mesa, AZ 85211–1466, a notice of interest, of such governmental, representatives, and parties in the above described surplus property, or any portion thereof. A notice shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to paragraph (7)(C) of Section 2905(b), the City of Mesa Department of Economic Development shall assist interested parties in evaluating the surplus property for the intended use, and publish in a newspaper of general circulation within Arizona, the date by which expressions of interest must be submitted, which shall be no less than ninety (90) days from the date of publication of this notice.

Bao-Anh Trinh, YA–3,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–14183 Filed 6–11–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 14, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 9, 2010.

Darrin King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation, and Policy Development

Type of Review: Revision.

Title: Annual Mandatory Collection of Elementary and Secondary Education Data for ED*Facts.*

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,059.
Burden Hours: 1,113,034.

Abstract: ED*Facts* is in the implementation phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all of the national education partners. In order to minimize the burden on the data providers, ED*Facts* seeks the transfer of the proposed data as soon as it has been processed each year for State, District, and School use. These data will then be stored in ED*Facts* and accessed by Federal education program managers and analysts as needed to make program management decisions. This process will eliminate redundant data collections while providing for the timeliness of data submission and use.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4232. When you access the information collection, click on "Download Attachments " to view. Written requests for information

should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–14225 Filed 6–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Alaska Native-Serving and Native Hawaiian-Serving Institutions (ANNH) Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031W and 84.031N.

Dates:

Applications Available: June 14, 2010.

Deadline for Transmittal of Applications: July 14, 2010.

Deadline for Intergovernmental Review: September 13, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Programs: The ANNH Programs provide grants to eligible institutions of higher education (IHEs) to help them become self sufficient and expand their capacity to serve low-income students, by providing funds to improve and strengthen the institution's academic quality, institutional management, and fiscal stability. For FY 2010, the ANNH program received $15,084,000 in discretionary funding under Title III, Part A, Section 317 of the Higher Education Act of 1965, as amended (HEA) and an additional $15 million in mandatory funding under Title III, Part F, Section 371 of the HEA. Applicants should refer to section 317 of the HEA for the allowable activities.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2010, there are four invitational priorities for this program. Under 34 CFR 75.105 (c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1

Support activities that will improve the institution's persistence and graduation rates.

Invitational Priority 2

Work with appropriate State agencies to develop strategies for using State longitudinal data systems to track outcomes for students attending the grantee institution, including the extent to which the students complete certificates, two-year degrees, and four-year degrees at other institutions.

Invitational Priority 3

Develop academic programs to improve course completion rates or develop innovative support programs that are designed to increase completion rates.

Invitational Priority 4

Develop dual—enrollment programs that facilitate the transition between high school and college or career pathways programs that integrate basic academic instruction with technical or professional occupational training to advance individuals, particularly adult learners, on a career path toward high-wage occupations in high-demand industries.

Program Authority: 20 U.S.C. 1057–1059d and 1067q.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for these programs in 34 CFR part 607.

II. Award Information

Type of Award: Discretionary grants. Five-year development grants, five-year cooperative arrangement development grants and two-year renovation grants will be awarded in FY 2010. Planning grants will not be awarded in FY 2010.

Estimated Available Funds: $11,151,000 in discretionary funding under Title III, Part A, Section 317 of the HEA and an additional $15 million in mandatory funding under Title III, Part F, Section 371 of HEA.

Program name and type of award	Maximum award amount	Estimated number of awards	Estimated average award amount
Title III: Alaska Native-Serving Institutions Program (84.031N):			
5-year Development Grants (Part A)	$800,000	5	$625,000
5-year Cooperative Arrangement Development Grants (Part A)	900,000	3	800,000
2-year Renovation Grants (Part F)	2,000,000	5	1,500,000
Title III: Native Hawaiian-Serving Institutions Program (84.031W):			
5-year Development Grants (Part A)	800,000	5	625,000
5-year Cooperative Arrangement Development Grants (Part A)	900,000	3	800,000
2-year Renovation Grants (Part F)	2,000,000	5	1,500,000

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months for development and cooperative arrangement, and 24 months for renovation grants.

III. Eligibility Information

1. *Eligible Applicants:* An IHE that qualifies as an eligible institution under the ANNH Programs may apply for grants under this notice. At the time of application, an Alaska Native-Serving institution must have an enrollment of undergraduate students that is at least twenty percent (20%) Alaska Native. At the time of application, a Native Hawaiian-Serving Institution must have an enrollment of undergraduate students that is at least ten percent (10%) Native Hawaiian. These programs are authorized by Title III, Part A, of the HEA. To qualify as an eligible institution under any Title III, Part A program, an institution must, among other requirements—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an "eligible institution" by demonstrating that it: A) Has an enrollment of needy students as described in 34 CFR 607.3; and B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Relationship Between the Title III, Part A Programs and the Hispanic-Serving Institutions Program (HSI)

Note 1: A grantee under the HSI program, which is authorized under Title V of the HEA, may not receive a grant under any HEA, Title III, Part A program, including the Alaska Native-Serving and Native Hawaiian-Serving Institutions Programs (ANNH). Further, a current HSI program grantee may not give up its HSI grant in order to receive a grant under any Title III, Part A program.

Note 2: An eligible HSI that does not fall within the limitation described in Note 1 (i.e., is not a current grantee under the HSI program) may apply for a FY 2010 grant under all Title III, Part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant.

Note 3: An eligible IHE that submits more than one application may only be awarded one individual development grant *or* one cooperative arrangement development grant in a fiscal year. Furthermore, we will not award a second cooperative arrangement development grant to an otherwise eligible IHE for the same award year as the IHE's existing cooperative arrangement development grant award.

Note 4: The Department will make five-year awards for individual development grants, five-year awards for cooperative arrangement development grants, and two-year renovation grants in rank order, from separate funding slates, according to the average score received from a panel of three readers.

2. *Cost Sharing or Matching:* These programs do not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1059(c)(3)(B)).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application via the Internet using the following address: *http://e-grants.ed.gov.* If you do not have access to the Internet, please contact Kelley Harris, Don Crews, or Darlene Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513.

You may contact these individuals at the following e-mail addresses or telephone numbers:

Kelley.Harris@ed.gov; (202) 219–7083.

Don.Crews@ed.gov; (202) 502–7574.

Darlene.Collins@ed.gov; (202) 502–7576.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for these programs.

Page Limits: We have established mandatory page limits for the applications to be submitted under this notice. You must limit your application to the equivalent of no more than 50 pages for an individual development grant, 70 pages for a cooperative arrangement development grant and 35 pages for a renovation grant using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1 inch margins at the top, bottom, and both sides. Page numbers and an identifier may be outside the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions and all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF–424); the Supplemental Information for SF–424 Form required by the Department of Education; Part II, the Budget Information Summary Form (ED Form 524); and Part IV, the assurance and certifications. The page limit also does not apply to the one-page abstract, the table of contents, the resumes, and the bibliography. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III of the application) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times: Applications Available:* June 14, 2010.

Deadline for Transmittal of Applications: July 14, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 13, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these programs.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202. Applicants that apply for construction funds under the Title III, Part A programs, must comply with Executive Order 13202 signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive Order provides that recipients of Federal construction

funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under these programs that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

6. *Other Submission Requirements:* Applications for grants under the ANNH Programs must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Alaska Native-Serving Institutions Program (CFDA number 84.031N) and the Native Hawaiian-Serving Institutions Program (CFDA number 84.031W) must be submitted electronically using the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of E-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the

Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Kelley Harris, Don Crews or Darlene Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513.

You may contact these individuals at the following e-mail addresses or telephone numbers:

Kelley.Harris@ed.gov; (202) 219–7083.

Don.Crews@ed.gov; (202) 502–7574.

Darlene.Collins@ed.gov; (202) 502–7576.

FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.031N and 84.031W), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Numbers 84.031N and 84.031W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a grant notification of receipt of your grant applications. If you do not receive the grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for these programs are in 34 CFR 607.22(a)–(g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses.

(a) Quality of The Applicant's Comprehensive Development Plan (Maximum 25 Points).

(b) Quality of Activity Objectives (Maximum 15 Points).

(c) Quality of Implementation Strategy (Maximum 20 Points).

(d) Quality of Key Personnel (Maximum 7 Points).

(e) Quality of Project Management Plan (Maximum 10 Points).

(f) Quality of Evaluation Plan (Maximum 15 Points).

(g) Budget (Maximum 8 Points).

2. *Review and Selection Process:* Awards will be made in rank order according to the average score received from a panel of three readers.

Tie-breaker for Development Grants. In tie-breaking situations for development grants, 34 CFR 607.23(b), requires that additional points be awarded to any applicants that: (1) Has an endowment fund of which the current market value, per full-time equivalent (FTE) enrolled student is less than the average current market value of the endowment funds, per FTE enrolled student at comparable institutions that offer similar instruction; has expenditures for library materials per FTE enrolled student that are less than the average expenditures per FTE enrolled student at comparable institutions that offer similar instruction; or that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2007–2008 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants to applicants that have the lowest endowment values per FTE student; and (b) cooperative arrangement development grants to applicants in accordance with Section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual

performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118 and 34 CFR 607.31. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Strengthening Alaska Native and Native Hawaiian-Serving Institutions programs:

a. The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at Alaska Native and Native Hawaiian-Serving Institutions. Note that this is a long-term measure, which will be used to periodically gauge performance, beginning in FY 2009.

b. The percentage of first-time, full-time degree-seeking undergraduate students at 4-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

c. The percentage of first-time, full-time degree-seeking undergraduate students at 2-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year Alaska Native and Native Hawaiian-Serving Institutions graduating within 6 years of enrollment; and

e. The percentage of first-time, full-time degree seeking undergraduate students enrolled at 2-year Alaska Native and Native Hawaiian-Serving Institutions graduating within 3 years of enrollment.

VII. Agency Contacts

For Further Information Contact: Kelley Harris, Don Crews, or Darlene Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513.

You may contact these individuals at the following e-mail addresses or telephone numbers:

Kelley.Harris@ed.gov; (202) 219–7083.
Don.Crews@ed.gov; (202) 502–7574.
Darlene.Collins@ed.gov; (202) 502–7576.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 9, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–14228 Filed 6–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.325D, 84.325K, and 84.325T

Note: This notice invites applications for three separate competitions. For key dates, contact person information, and funding information regarding each competition, see the chart in the *Award Information* section of this notice.

Dates:

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with children, including infants and toddlers, with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research and experience, to be successful in serving those children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA No.
Preparation of Leadership Personnel	84.325D
Combined Personnel Preparation	84.325K
Special Education Preservice Program Improvement Grants	84.325T

Absolute Priorities: For FY 2010 and any subsequent year in which we make awards based on the list of unfunded applications from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority for that competition.

The priorities are:

Absolute Priority 1—Preparation of Leadership Personnel (84.325D).

Background:

There continues to be a persistent need for special education, early intervention, and related services personnel who have been trained at the doctoral and postdoctoral levels to fill faculty, research, and direct service positions (Smith, Pion, & Tyler, 2004; Wasburn-Moses & Therrien, 2008; Woods & Snyder, 2009). Further, according to Lashley & Boscardin (2003), there is a need for personnel who have been trained at the graduate level (*i.e.,* masters, education specialist, and doctoral degrees, depending on State certification requirements) to fill special education and early intervention administrator positions.

Federal support is needed to increase the supply of these personnel and ensure that they have the necessary knowledge and skills to assume special education, early intervention, and related services leadership positions in universities, State educational agencies (SEAs), State lead agencies (State LAs), local educational agencies (LEAs), local lead agencies (local LAs), schools, or programs. Critical competencies for special education, early intervention, and related services leadership personnel are varied, depending on the type of training program; however, these competencies often include teaching skills, administrative skills,[1] and research skills as well as current knowledge of effective interventions that improve academic and functional outcomes for children with disabilities, including high-need children with disabilities. For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5) are in foster care, (6) have been incarcerated, or (7) are English language learners.

Priority:

The purpose of the Preparation of Leadership Personnel priority is to increase the quantity of special education, early intervention, and related services personnel who have been trained at the graduate and advanced graduate levels, and who are well-qualified for, and can effectively carry out leadership positions in universities, SEAs, State LAs, LEAs, local LAs, schools, or programs. This priority supports two types of programs that train leadership personnel:

Type A programs are designed to train, at the advanced graduate level, higher education faculty, researchers, or direct service providers in early intervention, special education, or related services. Type A programs culminate in a doctoral degree or provide postdoctoral learning opportunities.

Note: Training that leads to a Doctor of Audiology (AUD) degree is not included as part of this priority. Training programs that lead to an AUD degree are eligible to apply for funding under the Combined Personnel Preparation priority (CFDA 84.325K) announced elsewhere in this notice.

Type B programs are designed to train, at the graduate or advanced graduate levels, special education or early intervention administrators to work in SEAs, State LAs, LEAs, local LAs, schools, or programs. The applicant, based on State certification requirements for some positions, can determine whether the proposed Type B program prepares personnel for one or more administrative positions. Type B programs prepare personnel for positions such as SEA special education administrators, LEA special education directors or regional directors, school-based special education directors, preschool coordinators, and early intervention coordinators. Type B programs culminate in a master's, education specialist, or doctoral degree. The Office of Special Education Programs (OSEP) intends to fund in FY 2010 at least three approved applications proposing Type B programs.

Note: The training of school principals is not included as part of this priority.

Note: Applicants must identify the specific program type, A or B, for which they are applying for funding as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal for more than one program type.

Note: This priority does not authorize the selection of trainees on the basis of race, ethnicity, gender, or disability status.

To be considered for funding under the Preparation of Leadership Personnel absolute priority, both Type A and Type B program applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

The requirements of this priority are as follows:

(a) Demonstrate, in the narrative section of the application, under "Quality of Project Services," how—

(1) The program prepares leadership personnel to address the specialized needs of high-need children with disabilities (as defined in the background statement for this absolute priority). To address the needs of this population, the proposed program must—

(i) Identify the competencies needed by leadership personnel to either effectively teach others to implement, or to directly administer or conduct further research on, programs or interventions that improve the academic or functional outcomes of high-need children with disabilities; and

(ii) Prepare leadership personnel to apply these competencies in a variety of settings, including in high-need LEAs,[2] high-poverty schools,[3] and low-performing schools, including the persistently lowest-achieving schools.[4]

(2) All relevant coursework for the proposed program reflects current research and pedagogy on—

(i) Participation and achievement in the general education curriculum and improved outcomes for all children with disabilities, including high-need children with disabilities;

(ii) The provision of early intervention services in natural environments to improve outcomes for infants and toddlers with disabilities, including high-need children with disabilities and their families.

(iii) The competencies needed to work in high-need LEAs (as defined in this absolute priority), high-poverty schools (as defined in this absolute priority), and low-performing schools, including the persistently lowest-achieving schools (as defined in this absolute priority).

(3) The program is designed to integrate coursework with practicum

[1] For an example of standards for administrative skills, see the performance-based standards for a special education administrator developed by the Council for Exceptional Children (CEC) at: *http://www2.astate.edu/dotAsset/118756.pdf.*

[2] For purposes of this priority, the term *high-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[3] For the purposes of this priority, the term *high-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools in the State with respect to poverty level, using a measure of poverty determined by the State.

[4] For purposes of this priority, the term *persistently lowest-achieving school* means, consistent with section 1003(g) of the ESEA, School Improvement Grants (74 FR 65618), as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) Any secondary school that is eligible for, but does not receive, Title I funds that (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. To determine whether a school is a lowest-achieving school for purposes of this definition, a State must take into account both (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) The school's lack of progress on those assessments over a number of years in the "all students" group.

opportunities (*e.g.,* interning in a program or school serving high-need children with disabilities) that will enhance the competencies of leadership personnel to effectively—

(i) Serve in a variety of leadership positions, including positions that involve direct service, research, teacher training, or leadership at the university, SEA, State LA, LEA, local LA, school, or program level;

(ii) Work in a variety of leadership settings, particularly those in high-need LEAs with programs and schools serving high-need children with disabilities;

(iii) Collaborate and work with regular education personnel;

(iv) Incorporate universal design for learning principles [5] into curricula and instructional practice; and

(iv) Integrate instructional and assistive technologies into the delivery of services.

(4) The proposed leadership program ensures that scholars [6] are knowledgeable about—

(i) Applicable laws that affect children with disabilities, including IDEA and the ESEA;

(ii) The requirements for highly qualified teachers under IDEA and the ESEA;

(iii) The strategies that foster collaboration between personnel serving children with disabilities; and

(iv) The collection, management, and use of data to improve teaching and learning for the purpose of increasing children's academic and functional outcomes.

(b) Include, in the narrative section of the application under "Quality of Project Evaluation," a clear, effective plan for evaluating the extent to which program graduates have acquired the competencies set forth in the application as part of the proposed program. Applicants also must clearly describe, under "Quality of Project Evaluation," how the project will report these evaluation results to OSEP in the grantee's annual performance reports, the Scholar Data Report, and the project final performance report.

(c) Include, in the application appendix, all course syllabi for the proposed training program. Course syllabi must clearly incorporate research-based curriculum and pedagogy as required under paragraph (a) of this priority.

(d) Provide, in the application narrative, a detailed description of the program that includes the sequence of courses offered in the program and a comprehensive curriculum designed to meet program goals and obtain mastery in the following professional domains, as appropriate—

(1) Research methodology;

(2) Personnel preparation;

(3) Policy or professional practice; or

(4) Administration practices or techniques.

(e) Demonstrate in the application narrative the existence of national, State, or regional needs through appropriate research data. The applicant must provide evidence of the need for the leadership personnel they are proposing to train.

(f) Certify in the application that the applicant intends that all scholars recruited into the program will graduate from the program by the end of the grant's project period.

(g) Meet the statutory requirements in section 662(e) through 662(h) of IDEA,

(h) Ensure that at least 65 percent of the total requested budget per year will be used for scholar support or provide justification in the application narrative for any designation less than 65 percent. Examples of sufficient justification for proposing less than 65 percent of the budget for scholar support include:

(1) A project servicing rural areas that provides long-distance training, and requires Web Masters, adjunct professors, or mentors to operate effectively.

(2) A project that is expanding or adding a new area of emphasis to the program and, as a result of this expansion, needs additional faculty or other resources, such as expert consultants, additional training supplies, or equipment that would enhance the program.

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to special education, early intervention, or related services programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

(i) Certify in the application that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship (*e.g.,* as graduate assistants, unless the work is required to complete their training program). Please note that this prohibition on work as a condition of receiving a scholarship does not apply to the service obligation requirements in section 662(h) of IDEA.

(j) Budget for attendance at a three-day Project Directors' meeting in Washington, DC, during each year of the project.

(k) If the project maintains a Web site, include relevant information and documents in a format that meets government or industry-recognized standards for accessibility.

(l) Submit annual data on each scholar who receives grant support. Applicants are encouraged to visit the Personnel Development Scholar Data Report Web site at: *http://www.osepppd.org* for further information about this data collection requirement. Typically, data collection begins on or around November 1st of each year, and grantees are notified by e-mail about the data collection period for their grant. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report required of each grantee for continuation funding (*see* 34 CFR 75.590).

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that meet one or more of the following priorities. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants that demonstrate an established relationship with a high-need LEA that will provide scholars with a high-quality practicum experience in a high-poverty school, which may include a professional development school.[7]

[5] For purposes of this priority, the term *universal design for learning* has the meaning provided for the term under the Higher Education Act of 1965, as amended: "a scientifically valid framework for guiding educational practice that—"(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient" (20 U.S.C. 1003(24)). For consistency across U.S. Department of Education programs, we use this definition for priorities that intend to prepare personnel to teach and work in schools and other settings.

[6] For the purposes of this priority, the term *scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA (*see* 34 CFR 304.3(g)).

[7] Professional development schools are innovative partnerships between school districts and institutions of higher education that focus on four primary goals: (a) The preparation of new teachers; (b) faculty development; (c) inquiry

Continued

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants that prepare leadership personnel who will either provide direct services to, or train others who will work with, children, including infants and toddlers, who are deaf or hard of hearing to teach them listening and spoken language skills.

Note: Five is the maximum amount of points an applicant can receive for meeting one or both of the competitive preference priorities. The Department will fund a maximum of three applications in each of competitive preference priorities one and two with peer review scores that would not have otherwise qualified for funding without the competitive preference points.

References:

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National Council for Accreditation of Teacher Education (2009). What is a professional development school? Retrieved June 29, 2009, from *http://www.ncate.org/public/.*

Wasburn-Moses, L., & Therrien, W.J. (2008). The impact of Leadership Personnel Grants on the doctoral student population in special education. *Teacher Education and Special Education,* 31(2), 1–12.

Woods, J., & Snyder, P. (2009). Interdisciplinary doctoral leadership training in early intervention. *Infants & Young Children,* (22)1, 32–4.

Absolute Priority 2—Combined Personnel Preparation (84.325K).

Background:

State agencies, university training programs, local schools, early intervention programs, and community-based entities have emphasized the importance and difficulty of improving training programs for personnel to serve children, including infants and toddlers, with disabilities (Anderson & Hendrickson, 2007; Chang, Early, & Winton, 2005; Dymond, Gilson, & Myran, 2007). In addition, the national demand for fully credentialed early intervention, special education, and related services personnel to serve children, including infants and toddlers, with disabilities exceeds the available supply (McLeskey & Billingsley, 2008). Federal support is needed to increase the supply of these personnel and ensure that they have the necessary skills and knowledge to be successful in serving these children.

Priority:

The purpose of the Combined Personnel Preparation priority is to improve the quality and increase the number of personnel who are fully credentialed to serve children, including infants and toddlers, with disabilities—especially in areas of chronic personnel shortage—by supporting projects that prepare early intervention, special education, and related services personnel at the associate, baccalaureate, master's, and specialist levels. In order to be eligible under this priority, programs must provide training and support for scholars [8] to complete, within the project period of the grant, a degree, State certification, professional license, or State endorsement in early intervention, special education, or a related services field. Programs preparing scholars to be special education paraprofessionals, assistants in related services professions (*e.g.,* physical therapist assistants, occupational therapist assistants), or educational interpreters are also eligible under this priority.

Programs that provide an alternate route to certification or that support dual certification (special education and general education) for teachers are eligible as well.

Note: This priority does not authorize the selection of trainees on the basis of race, ethnicity, gender, or disability status.

To be considered for funding under the Combined Personnel Preparation absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority. These requirements are as follows:

(a) Demonstrate, in the narrative section of the application under "Quality of Project Services," how—

(1) Training requirements and required coursework for the proposed training program incorporate research-based practices that improve outcomes for children with disabilities (including relevant research citations);

(2) The program is designed to integrate coursework with practicum opportunities that will enhance the competencies of special education personnel to effectively—

(i) Serve and instruct children with disabilities;

(ii) Collaborate and work with regular education personnel;

(iii) Incorporate universal design for learning principles [9] into curricula and instructional practice;

(iv) Integrate instructional and assistive technologies into the delivery of services;

(v) Collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement; and

(vi) Support and work with parents and families of children with disabilities;

(3) The program prepares personnel to address the specialized needs of high-need children with disabilities.

Note: For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5) are in foster care, (6) have been incarcerated, or (7) are English language learners.

The program prepares personnel to work with this particular population by—

(i) Identifying the competencies needed by personnel to work with high-need children with disabilities;

(ii) Preparing personnel to apply these competencies in a variety of settings, including in high-need LEAs,[10] high-

directed at the improvement of practice; and (d) enhanced student achievement (National Council for Accreditation of Teacher Education, 2009).

[8] For the purposes of this priority the term *scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA (*see* 34 CFR 304.3(g)).

[9] For purposes of this priority, the term *universal design for learning* has the meaning provided for the term under the Higher Education Act of 1965, as amended: "a scientifically valid framework for guiding educational practice that—"(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient." (20 U.S.C. 1003(24)) For consistency across U.S. Department of Education programs, we use this definition for priorities that intend to prepare personnel to teach and work in schools and other settings.

[10] For purposes of this priority, the term *high-need LEA* means a local educational agency (LEA) (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

poverty schools,[11] and low-performing schools, including the persistently lowest achieving schools.[12]

(iii) Preparing personnel to use those competencies through early intervention, special education, and related services training programs.

(4) If preparing beginning special educators, the program is designed to provide extended clinical learning opportunities,[13] field experiences, or supervised practica (such as an additional year), and ongoing high-quality mentoring and induction opportunities;

(5) The program includes field-based training opportunities for scholars (as defined in 34 CFR 304.3(g));

(6) The proposed training program will—

(i) Enable scholars to be highly qualified, in accordance with section 602(10) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR 300.18, in the State(s) to be served by the applicant; and

(ii) Ensure that scholars are equipped with the knowledge and skills necessary to assist children in meeting State academic achievement standards; and

(7) The training program provides support to scholars through innovative strategies that are designed to enhance scholar retention and success in the program, such as using tutors or mentors or providing extended clinical learning opportunities or other field experiences.

(b) Include, in the narrative section of the application under "Quality of Project Evaluation," a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide scientifically based or evidence-based instruction and services that result in improved outcomes for children with disabilities. Applicants also must clearly describe, under "Quality of Project Evaluation," how the project will report these evaluation results to the Office of Special Education Programs (OSEP) in the grantee's annual performance reports, the Scholar Data Report, and the project final performance report.

(c) Include, in the application appendix, all course syllabi for the proposed training program. Course syllabi must incorporate research-based curriculum and pedagogy as required under paragraph (a) of this priority.

(d) Certify in the application that the applicant intends that all scholars recruited into the program will graduate from the program by the end of the grant's project period.

(e) Certify in the application that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship (*e.g.,* as graduate assistants, unless the work is required to complete their training program). Please note that this prohibition on work as a condition of receiving a scholarship does not apply to the service obligation requirements in section 662(h) of IDEA.

(f) Meet the statutory requirements contained in section 662(e) through 662(h) of IDEA.

(g) Ensure that at least 65 percent of the total requested budget per year be used for scholar support.

(h) Budget for attendance at a three-day Project Directors' meeting in Washington, DC, during each year of the project.

(i) If the project maintains a Web site, include relevant information and documents in a form that meets government or industry-recognized standards for accessibility.

(j) Submit annual data on each scholar who receives grant support. Applicants are encouraged to visit the Personnel Development Scholar Data Report Web site at *http://www.osepppd.org* for further information about this data collection requirement. Typically, data collection begins on or around November 1st of each year, and grantees are notified by e-mail about the data collection period for their grant. This data collection must be submitted electronically by the grantee and does not supplant the annual grant performance report required of each grantee for continuation funding (*see* 34 CFR 75.590).

Focus Areas:

Within this absolute priority, the Secretary intends to support projects under the following five focus areas: (A) Training Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities; (B) Training Personnel to Serve School-Age Children with Low-Incidence Disabilities; (C) Training Personnel to Provide Related Services to Children, Including Infants and Toddlers, with Disabilities; (D) Training Personnel in Minority Institutions to Serve Children, Including Infants and Toddlers, with Disabilities; and (E) Training Personnel to Provide Secondary Transition Services to School-Age Children with Disabilities.

Note: Applicants must identify the specific focus area (*i.e.,* A, B, C, D, or E) under which they are applying as part of the competition title on the application cover sheet (SF form 424, line 4). Applicants may not submit the same proposal under more than one focus area.

Focus Area A: Training Personnel to Serve Infants, Toddlers, and Preschool-Age Children with Disabilities. For the purpose of Focus Area A, *early intervention personnel* are those who are trained to provide services to infants and toddlers with disabilities ages birth to three, and early childhood personnel are those who are trained to provide services to children with disabilities ages three through five (in States where the age range is other than ages three through five, we will defer to the State's certification for early childhood). In States where certification in early intervention is combined with certification in early childhood, applicants may propose a combined early intervention and early childhood training project under this focus area. We encourage interdisciplinary projects under this focus area. For purposes of this focus area, interdisciplinary projects are projects that implement common core content and practica experiences across disciplines for early intervention providers or early childhood special educators, and related services personnel to serve infants, toddlers, and preschool-age children with disabilities. Projects training only related services personnel to serve infants, toddlers, and preschool-age children with disabilities are *not*

[11] For purposes of this priority, the term *high-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools in the State with respect to poverty level, using a measure of poverty determined by the State.

[12] For purposes of this priority, the term *persistently lowest-achieving school* means, consistent with section 1003(g) of the ESEA, School Improvement Grants (74 FR 65618), as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) Any secondary school that is eligible for, but does not receive, Title I funds that (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. To determine whether a school is a lowest-achieving school for purposes of this definition, a State must take into account both (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) The school's lack of progress on those assessments over a number of years in the "all students" group.

[13] For the purposes of this priority, the term *clinical learning opportunities* are a method of instruction for students to apply knowledge and skills in highly controlled or simulated situations to ensure that they possess needed skills and competencies prior to entering actual or typical environments with children with disabilities.

eligible under this focus area (see Focus Area C).

Focus Area B: Training Personnel to Serve School-Age Children with Low-Incidence Disabilities. For the purpose of Focus Area B, personnel who serve children with low-incidence disabilities are special education personnel, including paraprofessionals, trained to serve school-age children with low-incidence disabilities including visual impairments, hearing impairments, simultaneous vision and hearing impairments, significant cognitive impairments (severe mental retardation), orthopedic impairments, autism, and traumatic brain injury. Programs preparing special education personnel to provide services to visually impaired or blind children that can be appropriately provided in braille must prepare those individuals to provide those services in braille. Projects training educational interpreters are eligible under this focus area. Projects training other related services, speech and language, or adapted physical education personnel are *not* eligible under this focus area (see Focus Area C). Projects training special education early intervention or preschool personnel are *not* eligible under this focus area (see Focus Area A).

Focus Area C: Training Personnel to Provide Related Services to Children, Including Infants and Toddlers, with Disabilities. Programs training related services personnel to serve children, including infants and toddlers, with disabilities are eligible within Focus Area C. For the purpose of this focus area, related services include, but are not limited to, psychological services, physical therapy (including therapy provided by personnel trained at the Doctor of Physical Therapy (DPT) level), adapted physical education, occupational therapy, therapeutic recreation, social work services, counseling services, audiology services (including services provided by personnel trained at the Doctor of Audiology (DAud) level), and speech and language services. Training programs in States where personnel trained to serve children with speech and language impairments are considered to be special educators are eligible under this focus area. Projects training educational interpreters are *not* eligible under this focus area (see Focus Area B).

Focus Area D: Training Personnel in Minority Institutions to Serve Children, Including Infants and Toddlers, with Disabilities. Programs in minority institutions are eligible under Focus Area D if they train: (a) Personnel to serve one or more of the following: Infants, toddlers, and preschool-age children with disabilities; (b) personnel to serve school-age children with low-incidence disabilities; (c) personnel to provide related services to children, including infants and toddlers, with disabilities; or (d) personnel to provide secondary transition services to school-age children with disabilities. Minority institutions include institutions with a minority enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities. Programs in minority institutions training personnel in Focus Areas A, B, C, and E are eligible within Focus Area D. Programs that are training high-incidence special education personnel are *not* eligible under this priority (for the purpose of this priority "high-incidence disabilities" refers to learning disabilities, emotional disturbance, or mental retardation). However, programs that are training high-incidence special education personnel are eligible under Absolute Priority 3 described elsewhere in this notice.

Note: A project funded under Focus Area D may budget for less than 65 percent, the required percentage, for scholar support if the applicant can provide sufficient justification for any designation less than this required percentage. Sufficient justification for proposing less than 65 percent of the budget for scholar support would include support for activities such as program development, program expansion, or the addition of a new area of emphasis. Some examples of projects that may be eligible to designate less than 65 percent of their budget for scholar support include the following:

(1) A project that is proposing to start a new program may request up to a year for program development and capacity building. In the initial project year, no scholar support would be required. Instead, a project could hire a new faculty member or a consultant to assist in program development.

(2) A project that is proposing to build capacity may hire a field supervisor so that additional scholars can be trained.

(3) A project that is proposing to expand or add a new area of emphasis to the program may hire additional faculty or obtain other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Note: Applicants proposing projects to develop, expand, or add a new area of emphasis to special education or related services programs must provide, in their applications, information on how these new areas will be sustained once Federal funding ends.

Focus Area E: Training Personnel to Provide Secondary Transition Services to School-Age Children with Disabilities. Programs that offer a sequence of career, vocational, or secondary transition courses or that enable personnel to meet State requirements for a credential or endorsement in secondary transition services for children with disabilities are eligible under Focus Area E.

Eligible applicants must establish partnerships with the appropriate personnel in the institution's vocational rehabilitation counseling and career and technical education programs, if those programs are offered at the institution. Funds may be used to support faculty from those programs for their involvement in the activities outlined in this priority. Applicants must also provide documentation of the partnership in the form of a letter from the Dean or Department Chair. This letter must describe how the faculty from those programs will be involved in the partnership (*e.g.,* involvement in the design and delivery of courses and the supervision of scholar practicum experiences).

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that meet one or more of the following priorities. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants that design, field-test, and implement, as part of the evaluation described pursuant to paragraph (b) of the absolute priority under "Quality of Project Evaluation," a clear, effective plan for evaluating the knowledge and skills of graduates using a methodology that: (1) Tracks graduates after they exit from a training program; and (2) is sufficiently rigorous to yield reliable information on the quality of services provided by program graduates. Applicants must also discuss how they intend to use results and findings from this evaluation as a basis for enhancing the curriculum, pedagogy, and other elements of the training program receiving support.

The applicant can use up to $25,000 of the total award in each of years 1 and 2 for designing and field-testing the evaluation plan and can use up to $100,000 in each of years 3 and 4 for implementing the evaluation plan. Funds for the design, field testing, and implementation of the evaluation plan are not subject to the requirement to use at least 65 percent of the total requested budget per year for scholar support.

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Applicants that demonstrate an established relationship with a high-need LEA (as defined in this absolute priority) that will provide scholars with a high-quality practicum experience in a high-poverty school (as defined in the absolute priority), which may include a professional development school,[14] and opportunities for research-based professional development on strategies to better serve high-need children with disabilities.

Competitive Preference Priority 3: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

In Focus Area D, applicants that document that they are institutions with minority enrollment of 50 percent or more.

Competitive Preference Priority 4: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

In Focus Areas A, B, C, and D, applicants that prepare personnel who work with children, including infants and toddlers, who are deaf or hard of hearing to teach them listening and spoken language skills.

Note: Five is the maximum amount of points an applicant can receive for meeting competitive preference priorities 2, 3, or 4. Ten is the maximum amount of points an applicant can receive for meeting competitive preference priority 1 and either of competitive preference priorities 2, 3, or 4. Also, the Department will fund a maximum of three applications in each of the Focus Areas, with peer review scores that would not have otherwise qualified for funding without the competitive preference points.

References:

Anderson, L. F. & Hendrickson, J. M. (2007). Early-career EBD teacher knowledge, ratings of competency importance, and observed use of instruction and management competencies. *Education and Treatment of Children,* 30 (4), 43–65.

Chang, F., Early, D., & Winton, P. (2005). Early childhood teacher preparation in special education at 2- and 4-year institutions of higher education. *Journal of Early Intervention,* 27 (2), 110–124.

Dymond, S. K., Gilson, C. L., & Myran, S. P. (2007). Services for children with autism spectrum disorders. *Journal of Disability Policy Studies,* 18 (3), 133–147.

McLeskey, J. & Billingsley, B. (2008). How does the quality and stability of the teaching force influence the research-to-practice gap? *Remedial and Special Education,* 29 (5), 293–305.

Absolute Priority 3—Special Education Preservice Program Improvement Grants (84.325T).

Background:

State educational agencies, institutions of higher education (IHEs), and local educational agencies (LEAs) consistently report that personnel preparation programs for kindergarten through grade 12 (K–12) special education teachers should be restructured or redesigned so that graduates of these programs meet the highly qualified teacher (HQT) requirements in the Individuals with Disabilities Education Act (IDEA). To accomplish this goal, personnel preparation programs must ensure that their graduates who expect to be providing instruction in a core academic subject are able to meet State special education certification or licensure requirements, as well as have the necessary content knowledge, consistent with the HQT requirements in IDEA.

In A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act (ESEA) (Blueprint),[15] the Department emphasizes research that shows that "top-performing teachers can make a dramatic difference in the achievement of their students, and suggests that the impact of being assigned to top-performing teachers year after year is enough to significantly narrow achievement gaps." Reflecting this research, in both the Race to the Top competition [16] and the Blueprint, the Department has called for a focus on teacher effectiveness, determined by multiple measures, including in significant part the growth of each teacher's students. High-quality information on teacher effectiveness that is based on multiple measures can be used to provide feedback to teachers for on-going improvement and support every teacher's access to effective preparation, on-going support, recognition, and the collaboration opportunities he or she needs to succeed.

Priority:

The purpose of this priority is to support the improvement and restructuring (through expansion or redesign) of K–12 special education teacher preparation programs to ensure that program graduates meet the HQT requirements in IDEA and effectively serve children with high-incidence disabilities. For the purposes of this priority, the term *high-incidence disabilities* refers to learning disabilities, emotional disturbance, or mental retardation. In order to be eligible under this priority, applicants must currently prepare special education personnel (at the baccalaureate or master's level) to serve school-age children with high-incidence disabilities.

Note: This priority only supports the improvement or restructuring of existing programs for high-incidence personnel, through, for example, the expansion of a program for elementary school teachers to include a program for secondary school teachers serving children with high-incidence disabilities. This priority does not support the development of new programs for high-incidence personnel. In addition, this priority does not support the improvement of programs in institutions of higher education (IHEs) that are preparing preschool teachers.

Note: This priority does not authorize the selection of trainees on the basis of race, ethnicity, gender, or disability status.

To be considered for funding under the Special Education Preservice Program Improvement Grants priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority. The requirements of this priority are as follows:

(a) Demonstrate, in the narrative section of the application under "Quality of Project Services," how—

(1) The first year of the project period will be used for planning an improved or restructured K–12 teacher preparation program that includes induction and mentoring for program participants in LEAs. The planning activities during the first year must include revising curriculum; integrating evidence-based interventions that improve outcomes for children with high-incidence disabilities into the improved or restructured program (including providing research citations for those evidence-based interventions); and coordinating with the IDEA '04 and Research For Inclusive Settings (IRIS) Center for Training Enhancements on

[14] For the purposes of this priority the term *professional development schools* are innovative partnerships between school districts and institutions of higher education that focus on four primary goals: (a) The preparation of new teachers; (b) faculty development; (c) inquiry directed at the improvement of practice; and (d) enhanced student achievement (National Council for Accreditation of Teacher Education, 2009).

[15] The following Web site provides more information on A Blueprint for Reform: The Reauthorization of the Elementary and Secondary Education Act (ESEA): *http://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf.*

[16] The following Web site provides more information on the Race to the Top competition: *http://www2.ed.gov/programs/racetothetop/index.html.*

the use of its Web-based training modules (see *http://www.iris.peabody.vanderbilt.edu*). Applicants must describe first-year activities and include a five-year timeline and implementation plan in their applications. This plan must describe the proposed project activities associated with implementation of the improved or restructured program. Implementation of the plan may not begin without approval from OSEP;

(2) The improved or restructured program is designed to integrate coursework with practicum opportunities that will enhance the competencies of beginning special education teachers to—

(i) Collaborate and work with general education teachers and other personnel to:

(A) Provide effective services and instruction in academic subjects to children with high-incidence disabilities in K–12 general education classrooms; and

(B) Address the challenges of serving high-need children with disabilities.

Note: For the purpose of this priority, "high-need children with disabilities" refers to children (ages birth through twenty-one, depending on the State) who are eligible for services under IDEA, and who may be further disadvantaged and at risk of educational failure because they: (1) Are living in poverty, (2) are far below grade level, (3) are at risk of not graduating with a regular high school diploma on time, (4) are homeless, (5) are in foster care, (6) have been incarcerated, or (7) are English language learners.

(ii) Incorporate universal design for learning principles [17] into curricula and instructional practice;

(iii) Integrate instructional and assistive technologies into the delivery of services;

(iv) Collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement; and

(v) Support and work with parents and families of children with disabilities;

(3) The improved or restructured program is designed to prepare special education teachers to address the specialized needs of high-need children with disabilities (as defined in this absolute priority) with high-incidence disabilities by identifying the competencies that special education teachers need to work effectively with this population;

(4) The improved or restructured program is designed to provide extended clinical learning opportunities,[18] field experiences, or supervised practica and ongoing high-quality mentoring and induction opportunities in local schools. Applicants also must demonstrate how they will collaborate with the National Center to Inform Policy and Practice in Special Education Professional Development in designing the program to provide extended clinical learning opportunities, field experiences, or supervised practica (*see http://www.ncipp.org*);

(5) The improved or restructured program is designed to include field-based training opportunities in diverse settings including high-need LEAs,[19] high-poverty schools,[20] and low-performing schools, including the persistently lowest-achieving schools; [21]

(6) The improved or restructured program will—

(i) Enable scholars [22] to be highly qualified, in accordance with section 602(10) of IDEA and 34 CFR 300.18, in the State(s) to be served by the applicant; and

(ii) Ensure that scholars are equipped with the knowledge and skills necessary to assist children in meeting State academic achievement standards;

(7) The improved or restructured program is designed to provide support systems (including tutors, mentors, and other innovative practices) to enhance retention in and successful completion of the program; and

(8) The improved or restructured program will be maintained once Federal funding ends.

(b) For programs that will be restructured to produce graduates who meet the HQT requirements for teachers who teach core academic subjects, applicants must establish partnerships with the appropriate academic departments. Funds may be used to support faculty from the academic departments for their involvement in the activities outlined in paragraph (a)(4) of this priority. To address this requirement, applications must—

(1) Describe how representatives of relevant academic departments with expertise in the core academic subjects being addressed in the application will be involved in the partnership;

(2) Provide evidence that such partnerships will include a permanent faculty member from the appropriate academic departments, who will be involved in developing the overall project and designing the curriculum used to train scholars in the particular core academic subject; and

(3) Provide evidence that permanent faculty members from the appropriate academic departments participated in the design of the program.

(c) Include, in the narrative section of the application under "Quality of Project Evaluation," a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide scientifically based or evidence-based instruction and services that

[17] For purposes of this priority, the term *universal design for learning* under the Higher Education Act of 1965, as amended: "a scientifically valid framework for guiding educational practice that—"(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient" (20 U.S.C. 1003(24)). For consistency across U.S. Department of Education programs, we use this definition for priorities that intend to prepare personnel to teach and work in schools and other settings.

[18] Clinical learning opportunities are a method of instruction for students to apply knowledge and skills in highly controlled or simulated situations to ensure that they possess needed skills and competencies prior to entering actual or typical environments with children with disabilities.

[19] For purposes of this priority, the term *high-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

[20] For purposes of this priority, the term *high-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools in the State with respect to poverty level, using a measure of poverty determined by the State.

[21] For purposes of this priority, the term *persistently lowest-achieving school* means, consistent with the section 1003(g) of the ESEA, School Improvement Grants (74 FR 65618), as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) Any secondary school that is eligible for, but does not receive, Title I funds that (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. To determine whether a school is a lowest-achieving school, a State must take into account both (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) The school's lack of progress on those assessments over a number of years in the "all students" group.

[22] For the purposes of this priority, the term *scholar* means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under section 662 of IDEA (*see* 34 CFR 304.3(g)).

result in improved outcomes for children with disabilities. This plan must include a description of how the project will—

(1) Track training program graduates after they exit from the training program;

(2) Collect reliable data on the academic outcomes of students with high-incidence disabilities receiving special education and related services from program graduates; and

(3) Assess the quality of services provided by program graduates using student academic outcomes data, and data on other student outcomes as appropriate. Applicants must discuss how they intend to use any results and findings from this evaluation as a basis for informing and validating any proposed changes to the improved or restructured program. Applicants also must clearly describe, under "Quality of Project Evaluation," how the project will report these evaluation results to OSEP in the grantee's annual performance reports and final performance report.

(d) Include, in the application appendix, all course syllabi for the existing teacher preparation program.

(e) Submit to the Department, at the end of the first year of the project period, revised syllabi for the improved teacher preparation program.

(f) Meet the statutory requirements in section 662(e) through 662(f) of IDEA.

(g) Budget for planning and improvement activities, including activities to be performed by consultants. This priority does not provide financial support for scholars during any year of the project.

(h) Budget for attendance at a three-day Project Directors' meeting in Washington, DC, during each year of the project.

(i) If the project maintains a Web site, include relevant information and documents in a form that meets government or industry-recognized standards for accessibility.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following priority. For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Competitive Preference Points Based on Collaborative Activities with an SEA or State Licensing Agency.

Applicants that document how the project will collaborate with the SEA or State teacher licensing agency on issues of program improvement that affect teacher quality and effectiveness. For purposes of this competitive preference priority, documentation must include at least a letter from both the Dean and Department Chair of the appropriate college or department that supports high-incidence special education teacher preparation and from the relevant SEA or State teacher licensing agency verifying their intent to collaborate to improve teacher quality and effectiveness. The letter must include examples of the methods to be used for collaboration (*i.e.,* establishing a statewide consortium of teacher preparation programs for program improvement, program evaluation support, or other activities that would directly support program improvement of the projects within that State).

Competitive Preference Priority 2: Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets this priority.

This priority is:

Competitive Preference Points Based on Dual Certification (i.e., high-incidence disabilities and regular education).

Applicants that document that the improved or restructured program will prepare graduates to be dually certified in high-incidence disabilities and regular education. Documentation for purposes of this competitive preference priority must include at least a letter from both the Dean or Department Chair of the appropriate college or department that supports high-incidence special education teacher preparation and from the Dean or Department Chair of the appropriate college or department that prepares regular education teachers verifying their intent to collaborate to ensure that the improved or restructured program will prepare graduates to be dually certified in high-incidence disabilities and regular education. The applicant must include examples of collaboration in the letter of intent.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Awards: Discretionary grants for competitions CFDA 84.325D and 84.325K, and cooperative agreements for competition CFDA 84.325T.

Estimated Available Funds: $22,900,000.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2010

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award	Estimate number of awards	Project period	Contact person
84.325D Preparation of Leadership Personnel.	June 14, 2010.	July 14, 2010.	September 13, 2010.	$275,000–$300,000.	288,000	*300,000	21	Up to 48 mos.	Patricia Gonzalez, (202) 245–7355, Rm 4082.
84.325K Combined Personnel Preparation:	June 14, 2010.	July 14, 2010.	September 13, 2010.	.....	.....	.....	.....	.....	Maryann McDermott, (202) 245–7439, Rm 4062.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2010—Continued

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated range of awards	Estimated average size of awards	Maximum award	Estimate number of awards	Project period	Contact person
Focus Area A: Training Personnel to Serve Infants, Toddlers, and Pre-school Age Children with Disabilities	.....	.....	.....	$275,000–$300,000.	288,000	*300,000	9	Up to 48 mos.	
Focus Area B: Training Personnel to Serve School-Age Children with Low-Incidence Disabilities	.....	.....	.....	$275,000–$300,000.	288,000	*300,000	11	Up to 48 mos.	
Focus Area C: Training Personnel to Provide Related Services, Speech and Language Services, and Adapted Physical Education Children, Including Infants and Toddlers, with Disabilities	.....	.....	.....	$275,000–$300,000.	288,000	*300,000	9	Up to 48 mos.	
Focus Area D: Training Personnel in Minority Institutions to Serve Children, Including Infants and Toddlers, with Disabilities	.....	.....	.....	$275,000–$300,000.	288,000	*300,000	9	Up to 48 mos.	
Focus Area E: Training Personnel to Provide Secondary Transition Services to School-Age Children with Disabilities	.....	.....	.....	$275,000–$300,000.	288,000	*300,000	9	Up to 48 mos.	
84.325T Special Education Preservice Program Improvement Grants.	June 14, 2010.	July 14, 2010.	September 13, 2010.	$275,000–$300,000.	288,000	**300,000	12	Up to 60 mos.	Tina Diamond, (202) 245–6674, Rm 40940.

* We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

** For the *Special Education Preservice Program Improvement Grants*, 84.325T competition:

Note: We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.

Note: No more than one cooperative agreement will be awarded per IHE during the five-year project period. Programs in minority institutions that are preparing special education teachers of children with high-incidence disabilities are eligible to apply under this competition. For purposes of this competition, the term "minority institutions" include IHEs with a minority enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs).

Note: For *Absolute Priority 2—Special Education Preservice Program Improvement Grants* (84.325T), programs in IHEs that are preparing preschool teachers are not eligible to apply under that competition.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant and grant recipient funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.325D, 84.325K, or 84.325T.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III

to the equivalent of no more than 50 pages using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for the competitions announced in this notice.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under the competitions announced in this notice may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• Your participation in e-Application is voluntary.

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.325D, 84.325K, or 84.325T), LBJ Basement Level, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA number 84.325D, 84.325K, or 84.325T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more

frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include: (1) The percentage of projects that incorporate scientifically based practices into the curriculum; (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion; (4) the percentage of degree or certification recipients who are working in the area(s) for which they were trained upon program completion and are fully qualified under IDEA; (5) the percentage of scholars completing the IDEA-funded training programs who are knowledgeable and skilled in scientifically based practices for children, including infants and toddlers, with disabilities; (6) the percentage of low-incidence positions that are filled by personnel who are fully qualified under IDEA; and (7) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained.

Grantees may be asked to participate in assessing and providing information on these aspects of program quality.

VII. Agency Contact

See chart in the *Award Information* section in this notice for the name, room number and telephone number of the contact person for each competition. You can write to the contact person at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202–2600.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 9, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14229 Filed 6–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Overview Information Fund for the Improvement of Postsecondary Education (FIPSE)—Comprehensive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116B.

DATES: Applications Available: June 14, 2010.

Deadline for Transmittal of Applications: July 29, 2010.

Deadline for Intergovernmental Review: September 27, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Comprehensive Program supports innovative grants and cooperative agreements to improve postsecondary education. It supports reforms, innovations, and significant improvements of postsecondary education that respond to problems of national significance and serve as national models.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2010, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1.

Under this priority, we are particularly interested in centers of excellence for teacher preparation as described in section 242 of the Higher Education Act of 1965, as amended (HEA).

Invitational Priority 2.

Under this priority, we are particularly interested in university sustainability initiatives as described in section 881 of HEA.

Invitational Priority 3.

Under this priority, we are particularly interested in rural development initiatives for rural-serving colleges and universities as described in section 861 of HEA.

Invitational Priority 4.

Under this priority, we are particularly interested in initiatives to assist highly qualified minorities and women to acquire doctoral degrees in fields where they are underrepresented as described in section 807 of HEA.

Invitational Priority 5.

Under this priority, we are particularly interested in modeling and simulation programs as described in section 891 of HEA.

Invitational Priority 6.

Under this priority, we are particularly interested in higher education consortia to design and offer interdisciplinary programs that focus on poverty and human capability as described in section 741(a)(11) of HEA.

Invitational Priority 7.

Under this priority, we are particularly interested in innovative postsecondary models to improve college matriculation and graduation rates, including activities to facilitate transfer of credits between institutions of higher education (IHEs), alignment of curricula on a State or multi-State level between high schools and colleges and between two-year and four-year postsecondary programs, dual enrollment, articulation agreements, partnerships between high schools and community colleges, and partnerships between K–12 organizations and colleges for college access and retention programs.

Invitational Priority 8.

Under this priority, we are particularly interested in activities to develop or enhance educational partnerships and cross-cultural cooperation between postsecondary educational institutions in the United States and similar institutions in Haiti.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $27,307,000.

Estimated Range of Awards: $500,000–$750,000.

Estimated Average Size of Awards: $738,000.

Estimated Number of Awards: 37.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 20 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 20-page limit does not apply to the cover sheet; the budget section, including the budget narrative; the assurances and certifications; the one-page abstract; the resumes; the bibliography; or the letters of support. However, the page limit does apply to all of the application narrative section.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times: Applications Available:* June 14, 2010. *Deadline for Transmittal of Applications:* July 29, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 27, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Comprehensive Program—CFDA Number 84.116B must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the

electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date. *Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Donald Fischer, U.S. Department of Education, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.116B),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.116B),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following two performance measures will be used by the Department in assessing the success of the FIPSE Comprehensive Program:

(1) The extent to which funded projects are being replicated *(i.e.,* adopted or adapted by others).

(2) The extent to which projects are being institutionalized and continued after funding.

If funded, you will be asked to collect and report data from your project on steps taken toward achieving the outcomes evaluated by these performance measures (*i.e.,* replication and institutionalization). Consequently, applicants are advised to include these two outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Institutionalization and replication are important outcomes that ensure the ultimate success of projects funded under this program.

VII. Agency Contact

For Further Information Contact: Levenia Ishmell, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7500.

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 9, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–14235 Filed 6–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice proposing to revise the system of records notice for the Investigative Files of the Inspector General (18–10–01), 68 FR 38154 (June 26, 2003). The Department proposes to amend this system of records notice by: (1) Adding a new routine use to allow reporting on the activities of the Inspector General regarding American Recovery and

Reinvestment Act funds to the Recovery Accountability and Transparency Board (RATB) as established by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); (2) adding a new routine use to allow for disclosure of information in connection with response and remedial efforts in the event of a data breach in accordance with Office of Management and Budget (OMB) requirements in M–07–16 (May 22, 2007); (3) revising routine uses "(12) Disclosure to the President's Council on Integrity and Efficiency" and "(13) Disclosure for Qualitative Assessment Reviews" to allow reporting on the activities of the Inspector General to the Council of Inspectors General on Integrity and Efficiency (formerly the President's Council on Integrity and Efficiency) as established by the Inspector General Reform Act of 2008 (Pub. L. 110–409); (4) revising the routine use "(4) Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as Amended (HEA)" to allow the disclosure of information to an educational institution or a school that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; and (5) updating the system location addresses. This system of records provides essential support for investigative activities of the Office of Inspector General (OIG) relating to the Department's programs and operations, enabling the OIG to secure and maintain the necessary information and to coordinate with other law enforcement agencies as appropriate.

DATES: The Department seeks comments on the proposed, new routine uses of the information in the altered system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before July 14, 2010.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, OMB on [DRS: Insert date.]. This altered system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on [DRS: Insert date.] unless OMB waives ten days of its 40-day review period in which case on [DRS: Insert date.], or (2) July 14, 2010, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this altered system of records to the Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, PCP Building, Washington, DC 20202–1510. If you prefer to send your comments by e-mail, use the following address: *comments@ed.gov.*

You must include the term "OIG Investigative Files" in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education, PCP Building, Room 8166, 500 12th Street, SW., Washington, DC 20202–0028, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate accommodation or auxiliary aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Shelley Shepherd, Assistant Counsel to the Inspector General, 400 Maryland Avenue, SW., PCP building, room 8166, Washington, DC 20202–1510. *Telephone:* (202) 245–7077. If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act requires the Department to publish in the **Federal Register** this notice of an altered system of records (5 U.S.C. 552a(e)(4) and (11)). The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and prepare a report to OMB, whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Chair of the House Committee on Oversight and Government Reform. The report is intended to permit an evaluation of the probable or potential effect of the proposal on the privacy rights of individuals.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 9, 2010.

Kathleen S. Tighe,

Inspector General.

For the reasons discussed in the preamble, the Inspector General of the U.S. Department of Education publishes a notice of an altered system of records. The following amendments are made in the Notice of an Altered System of Records published in the **Federal Register** on June 26, 2003 (68 FR 38154–38158):

1. On page 38155, 2nd column, under the heading SYSTEM LOCATION(S), the paragraph is revised to read as follows:

SYSTEM LOCATION(S):

Dell Services, Building K, 2nd Floor, *Rack:* K2AG57, 2300 West Plano Parkway, Plano, Texas 75075–8427.

2. On page 38156, 2nd column, under the paragraph labeled "(4) Disclosure to Public and Private Sources in Connection with the Higher Education

Act of 1965, as Amended (HEA),'' the paragraph is revised to read as follows:

(4) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as Amended (HEA).* The OIG may disclose information from this system of records as a routine use to facilitate compliance with program requirements to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the HEA; to any educational institution or school that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; to any guaranty agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

3. On page 38157, 1st column, under the paragraph labeled ''(12) Disclosure to the President's Council on Integrity and Efficiency,'' the paragraph is revised to read as follows:

(12) *Disclosure to the Council of the Inspectors General on Integrity and Efficiency (CIGIE).* The OIG may disclose records as a routine use to members and employees of the CIGIE for the preparation of reports to the President and Congress on the activities of the Inspectors General.

4. On page 38157, 1st column, under the paragraph labeled ''(13) Disclosure for Qualitative Assessment Reviews,'' the paragraph is revised to read as follows:

(13) *Disclosure for Qualitative Assessment Reviews.* The OIG may disclose records as a routine use to members of the CIGIE, the DOJ, the U.S. Marshals Service, or any Federal agency for the purpose of conducting qualitative assessment reviews of the investigative operations of the Department of Education, Office of Inspector General to ensure that adequate internal safeguards and management procedures are maintained.

5. On page 38157, 1st column, after the paragraph labeled ''(13) Disclosure for Qualitative Assessment Reviews,'' add new paragraphs (14) and (15) to read as follows:

(14) *Disclosure to the Recovery Accountability and Transparency Board (RATB).* The OIG may disclose records as a routine use to the RATB for purposes of coordinating and conducting oversight of American Recovery and Reinvestment Act funds to prevent fraud, waste, and abuse.

(15) *Disclosure in the Course of Responding to Breach of Data.* The OIG may disclose records from this system to appropriate agencies, entities, and persons when (a) the OIG suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the OIG has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the OIG's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

6. On page 38158, 1st column, under the heading ADDITIONAL SYSTEM LOCATIONS, the paragraphs are revised to read as follows:

Office of Inspector General, U.S. Department of Education, J.W. McCormack Post Office and Courthouse, 5 Post Office Square, Suite 850, Boston, MA 02110–1491.

Office of Inspector General, U.S. Department of Education, 32 Old Slip, 26th Floor, New York, NY 10005–2500.

Office of Inspector General, U.S. Department of Education, The Wanamaker Building, 100 Penn Square East, Suite 502, Philadelphia, PA 19107–3323.

Office of Inspector General, U.S. Department of Education, 1000 Liberty Avenue, Room 1503, Pittsburgh, PA 15222–4004.

Office of Inspector General, U.S. Department of Education, Atlanta Federal Center, 61 Forsyth Street, Room 18T71, Atlanta, GA 30303–3104.

Office of Inspector General, U.S. Department of Education, 500 W. Madison Street, Suite 1414, Chicago, IL 60661–7204.

Office of Inspector General, U.S. Department of Education, 1999 Bryan Street, Suite 1430, Dallas, TX 75201–3136.

Office of Inspector General, U.S. Department of Education, 8930 Ward Parkway, Suite 2401, Kansas City, MO 64114–3302.

Office of Inspector General, U.S. Department of Education, One World Trade Center, Suite 2300, Long Beach, CA 90831–0023.

Office of Inspector General, U.S. Department of Education, Cesar E. Chavez Memorial Building, 1244 Speer Boulevard, Suite 604A, Denver, CO 80204–3582.

Office of Inspector General, U.S. Department of Education, Jacaranda Executive Court, 7890 Peters Road, Suite G–100, Plantation, FL 33324–4028.

Office of Inspector General, U.S. Department of Education, Federal Building and Courthouse, 150 Carlos Chardon Avenue, Room 747, Box 772, Hato Rey, PR 00918–1721.

[FR Doc. 2010–14238 Filed 6–11–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–182–C]

Application To Export Electric Energy; H.Q. Energy Services (U.S.) Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: H.Q. Energy Services (U.S.) Inc. (HQUS) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests, or requests to intervene must be submitted on or before July 14, 2010.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (fax 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On August 21, 1998, the Department of Energy (DOE) issued Order No. EA–182, which authorized HQUS to transmit electric energy from the United States to Canada as a power marketer using existing international transmission facilities for a five-year term. DOE renewed the HQUS export authorization on August 21, 2000, in Order No. EA–182–A and again on

August 19, 2005, in Order No. EA–182–B. That Order will expire on August 21, 2010. On May 13, 2010, HQUS filed an application with DOE for renewal of the export authority contained in Order No. EA–182–B for an additional five-year term.

The electric energy that HQUS proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by HQUS have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the HQUS application to export electric energy to Canada should be clearly marked with Docket No. EA–182–C. Additional copies are to be filed directly with Helene Cossette, Hydro-Quebec Production, 75, boulevard Rene-Levesque West, 17th Floor, Montreal Canada H2Z 1A4 *and* Jerry L. Pfeffer, Skaden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW., Washington, DC 20005. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by emailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC, on June 8, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–14198 Filed 6–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Implementing the National Broadband Plan by Empowering Consumers and the Smart Grid: Data Access, Third Party Use, and Privacy

AGENCY: Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: On May 11, 2010, the Department of Energy (DOE) published a Request for Information seeking comments and information from interested parties to assist DOE in understanding current and potential practices and policies for the states and other entities to empower consumers (and perhaps others) through access to detailed energy information in electronic form—including real-time information from smart meters, historical consumption data, and pricing and billing information. DOE will hold a public meeting as part of this request for information.

DATES: The Department will hold a public meeting on June 29, 2010, from 9:30 a.m. to 12:30 p.m. in Washington, DC. Any person wishing to speak at the public meeting should submit a request to do so before 4 p.m., June 25, 2010. If there are time constraints, those who have submitted a request will be given preference. Written comments are welcome, especially following the public meeting, and should be submitted by July 12, 2010 and reply comments by July 26, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8e069, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Katharine Dickerson at 202–586–5281 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by "NBP RFI: Data Access," by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov Follow the instructions for submitting comments.

E-mail: broadband@hq.doe.gov. Include "NBP RFI: Data Access" in the subject line of the message.

Mail: U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Maureen C. McLaughlin, Senior Legal Advisor to the General Counsel (202) 586–5281; *broadband@hq.doe.gov.*

For Media Inquires you may contact Jen Stutsman at 202–586–4940

SUPPLEMENTARY INFORMATION: On May 11, 2010, the Department of Energy (DOE) published a Request for Information seeking comments and information from interested parties to assist DOE in understanding current and potential practices and policies for the states and other entities to empower consumers (and perhaps others) through access to detailed energy information in electronic form—including real-time information from smart meters, historical consumption data, and pricing and billing information. (75 FR 26203) The request for information asked interested parties, including industry, consumer groups and state governments, to report on state efforts to enact Smart Grid privacy and data collection policies. The request for information also sought input regarding individual electric utility practices and policies regarding data access and collection; third party access to detailed energy information; and the role of the consumer in balancing the benefits of access and privacy. Finally, the request for information sought comment on what policies and practices should guide policymakers in determining who can access consumers' energy information and under what conditions.

Issued in Washington, DC, on June 8, 2010.

Scott Blake Harris,

General Counsel.

[FR Doc. 2010–14251 Filed 6–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Implementing the National Broadband Plan by Studying the Communications Requirements of Electric Utilities To Inform Federal Smart Grid Policy

AGENCY: Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: On May 11, 2010, the Department of Energy (DOE) published a Request for Information seeking comments and information from interested parties to assist DOE in understanding the communications requirements of utilities. DOE will hold a public meeting as part of this Request for Information.

DATES: The Department will hold a public meeting on June 17, 2010, from 10 a.m. to 12 p.m. in Washington, DC. Any person wishing to speak at the public meeting should submit a request to do so before 4 p.m., June 15, 2010.

If there are time constraints, those who have submitted a request will be given preference. Written comments are welcome, especially following the public meeting, and should be submitted by July 12, 2010 and reply comments by July 26, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8e069, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Katharine Dickerson at 202–586–5281 so that the necessary procedures can be completed.

Interested persons may submit comments, identified by "NBP RFI: Communications Requirements," by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: broadband@hq.doe.gov. Include "NBP RFI: Communications Requirements" in the subject line of the message.

Mail: U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Maureen C. McLaughlin, Senior Legal Advisor to the General Counsel (202) 586–5281; *broadband@hq.doe.gov*.

For Media Inquiries you may contact Jen Stutsman at 202–586–4940.

SUPPLEMENTARY INFORMATION: On May 11, 2010, the Department of Energy (DOE) published a Request for Information seeking comments and information from interested parties to assist DOE in understanding the communications requirements of utilities, including, but not limited to, the requirements of the Smart Grid (75 FR 26206). DOE also sought to collect information about electricity infrastructure's current and projected communications requirements, as well as the types of networks and communications services that may be used for grid modernization. Specifically, DOE sought information on what types of communications capabilities that the utilities think that they will need and what type of communications capabilities that the communications carriers think that they can provide. DOE will hold a public meeting as part of this request for information.

Issued in Washington, DC on June 8, 2010.

Scott Blake Harris,

General Counsel.

[FR Doc. 2010–14259 Filed 6–11–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1362–000]

Hatchet Ridge Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 7, 2010.

This is a supplemental notice in the above-referenced proceeding of Hatchet Ridge Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 28, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14150 Filed 6–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1337–000]

Premier Energy Services, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

June 7, 2010.

This is a supplemental notice in the above-referenced proceeding of Premier Energy Services, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 28, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14152 Filed 6–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Interviews, Teleconferences, Regional Workshops and Multi-Stakeholder Technical Conference on the Integrated Licensing Process

June 7, 2010.

ILP Effectiveness Evaluation 2010	Docket No. AD10–7–000.
Exelon Generation Company, LLC	Project No. 2355–011.
Exelon Generation Company, LLC	Project No. 405–087.
Merced Irrigation District	Project No. 2179–042.
Pacific Gas & Electric Company	Project No. 2310–173.
Nevada Irrigation District	Project No. 2266–096.
Sabine River Authority of Texas and State of Louisiana	Project No. 2305–020.
Town of Massena Electric Department	Project No. 12607–001.
Free Flow Power Corporation	Project No. 12829–001.
Free Flow Power Corporation	Project No. 12861–001.
Free Flow Power Corporation	Project No. 12912–001.
Free Flow Power Corporation	Project No. 12915–001.
Free Flow Power Corporation	Project No. 12921–001.
Free Flow Power Corporation	Project No. 12930–001.
Free Flow Power Corporation	Project No. 12938–001.

On May 18, 2010, the Federal Energy Regulatory Commission (FERC) staff issued notice of a second effectiveness evaluation of the Integrated Licensing Process (ILP). The purpose of this evaluation is to seek further feedback on experiences in the ILP and to explore ideas to better implement the ILP. The May 18, 2010 Notice describes this effort, which includes conducting interviews and teleconferences with a cross-section of stakeholders, four regional workshops, and a multi-stakeholder effectiveness technical conference in Washington, DC. To facilitate this review, FERC has contracted with Kearns & West to conduct the 2010 ILP Effectiveness Evaluation.

As indicated in the May 18, 2010 Notice members of Kearns & West are conducting phone interviews with a number of representatives of agencies, tribes, non-governmental organizations, licensees, Commission staff, and others involved in 19 hydropower licensing proceedings in which the applicants have completed the pre-filing efforts and filed license applications using the ILP. To gather additional insight into the ILP formal dispute resolution process, staff has decided to expand the interview efforts to include all the proceedings where the ILP formal dispute resolution process has been used. The additional proceedings are identified in the caption above. Because of *ex parte* concerns, discussions will be limited to process rather than the merits of any proceeding before the Commission.

See the May 18, 2010 Notice for additional details regarding the ILP effectiveness study.

For additional information, please contact David Turner at 202–502–6091 or *david.turner@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14151 Filed 6–11–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of the Carbon Sequestration—Geothermal Energy—Science Joint Workshop

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Notice of the Carbon Sequestration—Geothermal Energy—Science Joint Workshop.

SUMMARY: The DOE Geothermal Technologies Program, Office of Science-Geosciences Program and Office of Fossil Energy-Carbon Sequestration Program will be holding a joint workshop on Common Research Themes for Carbon Storage and Geothermal Energy, June 15–16, 2010. Experts from industry, academia, national labs, and State and Federal geological surveys will discuss geosciences research needs for subsurface reservoir characterization, development, and management. The resulting report will provide the collaborating offices with information key to coordinating high priority research in common areas. Further information, including the final report, when available, can be found on the Geothermal Technologies Program Web site—*http://www.geothermal.energy.gov.*

DATES: The Carbon Sequestration—Geothermal Energy—Science Joint Workshop will be held June 15, 2010, from 7:30 a.m.–7:30 p.m. EDT and June 16, 2010, from 7:30 a.m.–7:30 p.m. EDT.

ADDRESSES: The Carbon Sequestration—Geothermal Energy—Science Joint Workshop Conference will be held at the Hilton Washington, DC/Rockville Executive Meeting Center, 1750 Rockville Pike, in Rockville, MD.

FOR FURTHER INFORMATION CONTACT: Alison LaBonte, AAAS Science and Technology Policy Fellow, via e-mail at *alison.labonte@ee.doe.gov.* Further information on DOE's Geothermal

Technologies Program can be viewed at *http://www.geothermal.energy.gov/.*

SUPPLEMENTARY INFORMATION: Advance registration is required. If you would like to register, please contact Lee-Ann Talley via e-mail at *Lee-Ann.Talley@orise.orau.gov.*

Issued in Washington, DC, on June 9, 2010.

Steven Chalk,

Chief Operating Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2010–14257 Filed 6–11–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–R02–OAR–2010–0482; FRL–9161–5]

Adequacy Status of the Submitted 2009 $PM_{2.5}$ Motor Vehicle Emission Budgets for Transportation Conformity Purposes for New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets for $PM_{2.5}$ and NO_X in the submitted attainment demonstration state implementation plans for the New Jersey portions of the New York-Northern New Jersey-Long Island, NY–NJ–CT, and Philadelphia-Wilmington, PA–NJ–DE, $PM_{2.5}$ nonattainment areas to be adequate for transportation conformity purposes. The transportation conformity rule (40 CFR part 93) requires that the EPA conduct a public process and make an affirmative decision on the adequacy of budgets before they can be used by metropolitan planning organizations in conformity determinations. As a result of our finding, two metropolitan planning organizations in New Jersey (the North Jersey Transportation Planning Authority and the Delaware Valley Regional Planning Commission) must use the new 2009 $PM_{2.5}$ budgets for future transportation conformity determinations.

DATES: This finding is effective June 29, 2010.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3895, *laurita.matthew@epa.gov.*

The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2009, New Jersey submitted attainment demonstration state implementation plans to EPA for both the New York-Northern New Jersey-Long Island, NY–NJ–CT (New York), and Philadelphia-Wilmington, PA–NJ–DE (Philadelphia), $PM_{2.5}$ nonattainment areas. The purpose of New Jersey's submittal was to demonstrate the State's progress toward attaining the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (62 FR 38652, July 18, 1997). New Jersey's submittal included motor vehicle emissions budgets ("budgets") for 2009 for use by the State's metropolitan planning organizations in making transportation conformity determinations. On August 19, 2009, EPA posted the availability of the budgets our Web site for the purpose of soliciting public comments. The comment period closed on September 18, 2009, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to New Jersey on May 4, 2010, stating that the 2009 motor vehicle emissions budgets in New Jersey's SIPs for both the New York and Philadelphia $PM_{2.5}$ nonattainment areas are adequate because they are consistent with the required attainment demonstration. In the letter we also clarified that the adequate 2009 budgets do not replace previously approved "early progress" budgets for either NJTPA (71 FR 38770, July 10, 2006) or the Mercer County portion of DVRPC (73 FR 24868, May 6, 2008). However, since the previously approved budgets were established voluntarily (*i.e.* not to satisfy a specific Clean Air Act requirement), and the budgets submitted on April 1, 2009, were part of a required attainment demonstration, the budgets being found adequate today will co-exist with the previously approved budgets, and the more protective budgets will take precedence in any regional emissions analysis performed by either MPO.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f). We have followed this rule in making our adequacy determination. The motor vehicle emissions budgets being found adequate today are listed in Table 1. EPA's finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

TABLE 1—2009 ATTAINMENT $PM_{2.5}$ MOTOR VEHICLE EMISSIONS BUDGETS FOR NEW JERSEY

[Tons per year]

Metropolitan planning organization	$PM_{2.5}$	NO_X
North Jersey Transportation Planning Authority	842	44,321
Delaware Valley Regional Planning Commission (Mercer County only)	105	5,323
Delaware Valley Regional Planning Commission (Burlington, Camden, and Gloucester Counties)	341	17,319

Authority: 42 U.S.C. 7401–7671q.

Dated: June 2, 2010.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2010–14209 Filed 6–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9162–4; Docket ID No. EPA–HQ–ORD–2010–0395]

Draft EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments (EPA/600/R–10/038A)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Listening Session.

SUMMARY: EPA is announcing a listening session to be held on July 9, 2010, during the public comment period for the external review draft document entitled "EPA's Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments" (EPA/600/R–10/038A). The EPA's draft document and peer review charge are available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* This draft document responds to the key recommendations and comments included in the National Academy of Sciences (NAS) 2006 report. In addition, it includes new analyses on potential human effects that may result from exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).

The release of the draft document for public comment was announced in a May 21, 2010, **Federal Register** Notice (75 FR 28610). EPA also announced that it intends to forward all public comments submitted before July 7, 2010, in response to the May 21, 2010, Notice, to the EPA Science Advisory Board (SAB) peer review panel for its consideration and provided instructions for submitting comments.

The draft document is also being provided to the SAB, a body established under the Federal Advisory Committee Act, for independent external peer review. The SAB is convening an expert panel composed of scientists knowledgeable about technical issues related to dioxins and risk assessment. The SAB is holding a public teleconference on June 24, 2010, and a public panel meeting on July 13–15, 2010. The SAB peer review meetings were announced by the SAB staff office in a separate May 24, 2010, **Federal Register** Notice (75 FR 28805). Members of the public who wish to ensure that their technical comments are provided to the SAB expert panel before each meeting should also e-mail their comments separately to Thomas Armitage, the SAB Designated Federal Officer at *armitage.thomas@epa.gov,* following the procedures in the May 24, 2010, **Federal Register** Notice announcing the SAB public meetings. The public comment period and SAB external peer review are independent processes that provide separate opportunities for all interested parties to comment on the draft report.

The purpose of the listening session is to allow all interested parties to present scientific and technical comments on draft IRIS health assessments to EPA and other interested parties during the public comment period and before the external peer review meeting. EPA welcomes the scientific and technical comments that will be provided to the Agency by the listening session participants. All comments submitted according to the detailed instructions provided in the May 21, 2010, **Federal Register** Notice under **SUPPLEMENTARY INFORMATION** will be considered by the Agency as it revises the draft assessment in response to the independent external peer review and public comments. All presentations will become part of the official public record.

DATES: The listening session on the draft IRIS health assessment for dioxin will be held on July 9, 2010, beginning at 9 a.m. and ending at 4 p.m., Eastern Daylight Time. If you would like to make a presentation at the listening session, you should register by July 2, 2010, indicate that you wish to make oral comments at the session, and indicate the length of your presentation. When you register, please indicate if you will need audio-visual equipment (*e.g.,* laptop computer and slide projector). In general, each presentation should be no more than 30 minutes. If, however, there are more requests for presentations than the allotted time allows, then the time limit for each presentation will be adjusted. A copy of the agenda for the listening session will be available at the meeting. If no speakers have registered by July 2, 2010, the listening session will be cancelled and EPA will notify those registered of the cancellation.

The public comment period for review of this draft assessment was announced previously in the **Federal Register** (75 FR 28610) on May 21, 1010. As stated in that **Federal Register** Notice, the public comment period began on May 21, 2010, and ends August 19, 2010. Any technical comments submitted during the public comment period should be in writing and must be received by EPA by August 19, 2010, according to the procedures outlined in the May 21, 2010, **Federal Register** Notice. Only those public comments submitted by July 7, 2010, or e-mailed separately to Thomas Armitage, the SAB Designated Federal Officer at *armitage.thomas@epa.gov,* following the procedures in the May 24, 2010, **Federal Register** Notice announcing the SAB public meetings, will be provided to the independent peer-review panel prior to the peer-review meeting. However, all comments received during the public comment period will be provided to the SAB peer review committee and will also inform the Agency's revision of the draft assessment.

ADDRESSES: The listening session on the draft dioxin assessment will be held at the EPA offices at Two Potomac Yard South Building, 4th Floor, S–4370–80, 2733 South Crystal Drive, Arlington, Virginia 22202. To attend the listening session, register by July 2, 2010. To present at the listening session, indicate in your registration that you want to make oral comments at the session and provide the length of your presentation. To register, send an e-mail to: *IRISListeningSession@epa.gov* (subject line: Dioxin Listening Session); call Christine Ross at 703–347–8592; or fax a registration request to 703–347–8689 (please reference the "Dioxin Listening Session" and include your name, title, affiliation, full address and contact information). Please note that to gain entrance to this EPA building to attend the meeting, attendees must have photo identification with them and must register at the guard's desk in the lobby. The guard will retain your photo identification and will provide you with a visitor's badge. At the guard's desk, attendees should give the name Christine Ross and the telephone number 703–347–8592 to the guard on duty. The guard will contact Ms. Ross who will meet you in the reception area to escort you to the meeting room. When you leave the building, please return your visitor's badge to the guard and you will receive your photo identification.

A teleconference line will also be available for registered attendees/speakers. The teleconference number is 866–299–3188, and the access code is 926–378–7897, followed by the pound sign (#). The teleconference line will be activated at 8:45 a.m., and you will be asked to identify yourself and your affiliation at the beginning of the call.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the "Dioxin Listening Session" and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Christine Ross at 703–347–8592 or *IRISListeningSession@epa.gov*. To request accommodation of a disability, please contact Ms. Ross, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: For information on the public listening sessions, please contact Christine Ross, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone:* 703–347–8592; *facsimile:* 703–347–8689; or *e-mail: IRISListeningSession@epa.gov*. For questions about the draft dioxin assessment, contact Glenn Rice, National Center for Environmental Assessment, A110, U.S. EPA, 26 West Martin Luther King Drive, Cincinnati, OH 45268; *telephone:* 513–569–7813; *facsimile:* 513–487–2539 or *e-mail: rice.glenn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA's IRIS is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to chemical substances found in the environment. Through the IRIS Program, EPA provides the highest quality science-based human health assessments to support the Agency's regulatory activities. The IRIS database contains information for more than 540 chemical substances that can be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, IRIS provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic noncancer health effects and cancer assessments. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: June 8, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–14239 Filed 6–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9161–3]

Science Advisory Board Staff Office; Notification of Closed Meetings of the Science Advisory Board's Scientific and Technological Achievement Awards Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office announces a meeting and teleconference of the SAB's Scientific and Technological Achievement Awards (STAA) Committee to develop draft recommendations regarding the recipients of the Agency's 2010 Scientific and Technological Achievement Awards for consideration by the SAB. The meetings will be closed to the public.

DATES: The meeting dates are Monday and Tuesday, June 28 and 29, 2010, from 8 a.m. to 5 p.m., and Wednesday, June 30, 2010, from 8 a.m. to 1 p.m .e.t. The teleconference date is Tuesday, July 27, 2010, from 1 p.m. to 5 p.m. e.t.

ADDRESSES: The closed meeting will be held at the Park Hyatt Washington Hotel, 1201 24th Street, NW., Washington, DC 20037. The closed teleconference will be conducted by phone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Mr. Edward Hanlon, Designated Federal Officer, by telephone: (202) 343–9946 or e-mail at *hanlon.edward@epa.gov*. The SAB Mailing address is: U.S. EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB concerning the meeting and teleconference announced in this notice may be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary: Pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app.2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting and teleconference will be closed to the public. The purpose of the meeting and teleconference is for the Committee to discuss recommendations for the SAB regarding the recipients of the Agency's 2010 Scientific and Technological Achievement Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the SAB meeting and teleconference will be closed to the public because it is concerned with selecting employees deserving of awards. In making these recommendations, the Agency requires full and frank advice from the EPA Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the meeting and teleconference will be kept and certified by the Chair.

Dated: June 7, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–14206 Filed 6–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9161–8]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Science Advisory Board Exposure and Human Health Committee (EHHC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Exposure and Human Health Committee (EHHC) on July 1–2, 2010 to receive briefings on risk assessment activities from several EPA programs.

DATES: The public meeting will be held on July 1, 2010 from 9 a.m. to 5 p.m. (Eastern Daylight Time) and on July 2,

2010 from 9 a.m. to 1:30 p.m. (Eastern Daylight Time).

ADDRESSES: The meeting will be held at the St. Regis Hotel, 923 16th Street, NW., Washington, DC 20006; telephone (202) 638–2626.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference should contact Dr. Suhair Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9977; fax (202) 233–0643; or e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the Exposure and Human Health Committee of the EPA Science Advisory Board will hold a public meeting to learn about and discuss current initiatives and activities within EPA focused on human health risk assessment. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The SAB Exposure and Human Health Committee (EHHC) provides advice on the development and use of guidelines for human health effects, exposure assessment, and risk assessment. The EPA's National Center for Environmental Assessment, Risk Assessment Forum, and Office of Pesticide Programs will brief the EHHC on ongoing and planned human health risk assessment activities. The briefings will serve as background information for the Committee to develop advice on the subject areas.

Availability of Meeting Materials: The agenda and other materials in support of the meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the meeting.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB meeting will be limited to five minutes, with no more than one hour for all speakers. Those interested in being placed on the public speakers list should contact Dr. Shallal at the contact information provided above by June 24, 2010. *Written Statements:* Written statements should be received in the SAB Staff Office by June 24, 2010. Written statements should be supplied to the DFO via e-mail to *shallal.suhair@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Suhair Shallal at (202) 343–9977 or *shallal.suhair@epa.gov.* To request accommodation of a disability, please contact her preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: June 7, 2010.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–14207 Filed 6–11–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9161–2]

Notice of Proposed Settlement Agreement and Opportunity for Public Comment: West Huntington Spill Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(h)(i), notice is hereby given of a proposed settlement that is intended to resolve the potential liability under CERCLA of a party for response costs incurred by EPA and/or by the United States Department of Justice on behalf of EPA, in connection with the West Huntington Spill Site, Huntington, West Virginia ("Site").

DATES: Written comments on the proposed settlement agreement must be received by July 14, 2010.

ADDRESSES: Submit your comments, identified by Docket No. CERC–03–2010–0022–CR, by mail to: Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

FOR FURTHER INFORMATION CONTACT:

Robert Sanchez (3HS62), U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2029, *Telephone:* (215) 814–2488, Fax number (215) 814–2603, *E-mail address: Sanchez.Robert@epa.gov.*

James Van Orden, U.S. EPA, 1650 Arch Street, Philadelphia, PA 19103–2010, *Telephone:* (215) 814–2693, Fax Number (215) 814–2601, *E-mail address: Vanorden.James@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

Notice is hereby given of a proposed Settlement Agreement and Administrative Consent Order between the United States Environmental Protection Agency and Marathon Petroleum Company, LLC that has been approved, subject to public comment, pursuant to Section 122(h)(1) of CERCLA. The administrative agreement was signed by the Director of the Hazardous Site Cleanup Division, EPA Region III, on May 24, 2010. The settlement provides for recovery of $147,935.00 from Marathon Petroleum Company, LLC, which effectively represents the entirety of the costs incurred by EPA and the U.S. Department of Justice on behalf of EPA in connection with the Site.

The Environmental Protection Agency will receive written comments on the proposed administrative settlement for a period of thirty (30) days from the date of publication of this Notice. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of CERCLA. Unless EPA or the Department

of Justice determines, based on any comments which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

A copy of the proposed Agreement for Recovery of Past Response Costs can be obtained from the United States Environmental Protection Agency, Region III, Office of Regional Counsel (3RC00), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029 by contacting James Van Orden, Assistant Regional Counsel, at (215) 814–2693, or via e-mail at *Vanorden.James@epa.gov.* It is important to note that it is EPA's policy to make public comments, whether submitted electronically or in paper, available to the public, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Dated: June 3, 2010.

Kathryn A. Hodgkiss,

Acting Director, Hazardous Site Cleanup Division, Region 3.

[FR Doc. 2010–14237 Filed 6–11–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

June 7, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1134.

Title: Schools and Libraries Universal Service Support Program ("E–rate") Broadband Survey.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not–for–profit institutions and state, local or tribal government.

Number of Respondents and Responses: 5,100 respondents, 5,100 responses.

Estimated Time per Response: 5 to 20 minutes (.084 – .33 hours).

Frequency of Response: On occasion and one–time reporting requirements.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S. C. sections 151 –154, 201–205, 218–220, 254, 303(r) and 403.

Total Annual Burden: 1,675 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: Although it is unlikely that the survey will solicit any confidential information, pursuant to 47 CFR 0.459 of the Commission's rules, a respondent may request that information submitted to the Commission not be put in the public record. The respondent must state the reasons, and the facts on which those reasons are based, for withholding the information from the public record. The appropriate Bureau or Office Chief of the Commission may grant a confidentiality request that presents, by a preponderance of the evidence, a case for non–disclosure consistent with the Freedom of Information Act (FOIA), 4 U.S.C. section 552. If a confidentiality request is denied, the respondent has five days to appeal the decision before the Commission. If the appeal before the

Commission is denied, the respondent has five days to seek a judicial stay.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) during this comment period to obtain the full three year clearance from them. The Commission is submitting this expiring information collection as an extension (no change in the reporting requirement). The Commission is correcting the number of respondents and burden hours originally submitted to OMB as an emergency request in January. With this submission to OMB, we are reporting more accurate estimates.

The American Recovery and Reinvestment Act of 2009 (ARRA) authorized the Federal Communications Commission to create the National Broadband Plan that shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. Consistent with this effort, the Wireline Competition Bureau of the Commission seeks to conduct a survey of all applicants under the Schools and Libraries Universal Service Program, as known as the "E–rate program", to determine the current state of broadband usage and access within schools and libraries in the United States in order to determine how to best address their educational and technological needs as part of the National Broadband Plan.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–14177 Filed 6–11–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

June 8, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0710.

Title: Policy and Rules Under Parts 1 and 51 Concerning Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit .

Number of Respondents and Responses: 15,282 respondents; 1,067,987 responses.

Estimated Time per Response: .50 – 2,880 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 1 – 4, 201 – 205, 214, 224, 251, 303(r), and 601.

Total Annual Burden: 645,798 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the respondents wish to submit information which they believe is confidential, they may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. However, there is a significant decrease of 409,352 total annual burden hours and a $625,000 decrease in annual costs. This is due to several reasons including: (1) re–calculations of each burden estimate; (2) re–estimate of the estimated time burden for some of the information collection categories; and (3) less time per response due to familiarity gained over the years of performing these functions.

The Commission adopted rules and regulations to implement parts of sections 251 and 252 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements, transport and termination and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost–

based and just and reasonable and provide access to right–of–way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–14178 Filed 6–11–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

June 8, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 13, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0170.

Title: Section 73.1030, Notifications Concerning Interference to Radio Astronomy, Research and Receiving Installations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit entities.

Number of Respondents and Responses: 57 respondents and 57 responses.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 29 hours.

Total Annual Cost: $14,250.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.1030 states in order to minimize harmful interference at the National Radio Astronomy Observatory site located at Green, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory at Sugar Grove, Pendleton County, West Virginia, a licensee proposing to operate a short–term broadcast auxiliary station pursuant to Section 74.24 of the Commission's rules, and any applicant for authority to construct a new broadcast station, or for authority to make changes in the frequency, power, antenna height, or antenna directivity of an existing station within the area bounded by 39°15′ N on the north, 78°30′ W on the east, 37°30′ N on the south, and 80°30′ W on the west, shall notify the Interference Office, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944. Telephone: (304) 456–2011. The notification shall be in writing and set forth the particulars of the proposed station, including the geographical coordinates of the antenna, antenna height, antenna directivity if any, proposed frequency, type of emission and power. The notification shall be made prior to, or simultaneously with, the filing of the application with the Commission. After receipt of such applications, the FCC will allow a period of 20 days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the 20–day period from the National Radio Astronomy Observatory for itself, or on behalf of the Naval Radio Research Observatory, the FCC will consider all aspects of the problem and take whatever action is deemed appropriate.

Section 73.1030 of the Commission's rules, also requires that any applicant for a new permanent base or fixed station authorization to be located on the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra, or for a modification of an existing authorization which would change the frequency, power, antenna height, directivity, or location of a station on these islands and would increase the likelihood of the authorized facility causing interference, shall notify the Interference Office, Arecibo Observatory, HC3 Box 53995, Arecibo, Puerto Rico 00612, in writing or electronically, of the technical parameters of the proposal. Applicants may wish to consult interference guidelines, which will be provided by Cornell University. Applicants who choose to transmit information electronically should e–mail to: prcz@naic.edu.

(i) The notification to the Interference Office, Arecibo Observatory shall be made prior to, or simultaneously with, the filing of the application with the Commission. The notification shall state the geographical coordinates of the antenna (NAD–83 datum), antenna height above ground, ground elevation at the antenna, antenna directivity and gain, proposed frequency and FCC Rule Part, type of emission, and effective radiated power.

(ii) After receipt of such applications, the Commission will allow the Arecibo Observatory a period of 20 days for comments or objections in response to the notification indicated. The applicant will be required to make reasonable efforts to resolve or mitigate any potential interference problem with the Arecibo Observatory and to file either an amendment to the application or a

modification application, as appropriate. The Commission shall determine whether an applicant has satisfied its responsibility to make reasonable efforts to protect the Observatory from interference.

OMB Control Number: 3060–0188.

Title: Call Sign Reservation and Authorization System, FCC Form 380.

Form Number: FCC Form 380.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit entities, Not–for–profit institutions, and State, local, or tribal government.

Number of Respondents and Responses: 1,600 respondents and 1,600 responses.

Estimated Hours per Response: 0.166 – 0.25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 333 hours.

Total Annual Cost: $162,000.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required for this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3550 provides that all requests for new or modified call signs be made via the on–line call sign reservation and authorization. The Commission uses an on–line system, FCC Form 380, for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Access to the call sign reservation and authorization system is made by broadcast licensees and permittees, or by persons acting on their behalf, via the Internet's World Wide Web. This on–line, electronic call sign system enables users to determine the availability and licensing status of call signs; to request an initial, or change an existing, call sign; and to determine and submit more easily the appropriate fee, if any. Because all elements necessary to make a valid call sign reservation are encompassed within the on–line system, this system prevents users from filing defective or incomplete call sign requests. The electronic system also provides greater certitude, as a selected call sign is effectively reserved as soon as the user has submitted its call sign request. This electronic call sign reservation and authorization system has significantly improved service to all radio and television broadcast station licensees and permittees.

OMB Control Number: 3060–0439.

Title: Section 64.201, Restrictions on Indecent Telephone Message Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities; Individuals or households.

Number of Respondents and Responses: 10,200 respondents; 10,200 responses.

Estimated Time per Response: .166 hours (10 minutes average per response).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at Section 223 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 223, Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications.

Total Annual Burden: 1,632 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, "Informal Complaints and Inquiries." As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 "Informal Complaints and Inquiries", in the Federal Register on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: <http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html>. The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: Under Section 223 of the Act, common carriers are required, to the extent technically feasible, to prohibit access to obscene or indecent communications from the telephone of a subscriber who has not previously requested such access in writing, if the carrier collects charges from subscribers for such communications. 47 CFR 64.201 implements Section 223 of the Act and also includes the following information collection requirements: (1) Adult message service providers notify their carriers in writing of the nature of their service; and (2) A provider of adult message services request that its carriers identify these services as such in bills to their subscribers. The information requirements are imposed on carriers, and on adult message service providers and those who solicit their services, to ensure that minors and anyone who has not consented to access such material are denied access to such material in adult message services.

OMB Control Number: 3060–0665.

Title: Section 64.707, Public Dissemination of Information by Providers of Operator Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 436 respondents; 436 responses

Estimated Time per Response: 4 hours (average per response).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority citation for the information collection requirements is found at Section 226 of the Act, 47 U.S.C 226.

Total Annual Burden: 1,744 hours.

Total Annual Cost: $43,600.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Pursuant to 47 CFR 64.707, providers of operator services must regularly publish and make available at no cost to requesting consumers written materials that describe any recent changes in operator services and choices available to consumers. Consumers use the information to increase their knowledge of the choices available to them in the operator services marketplace.

OMB Control Number: 3060–0973.

Title: Section 64.1120(e), Verification of Orders for Telecommunications Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 75 respondents; 225 responses.

Estimated Time per Response: 1 to 5 hours (average per response).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority citation for the information collection requirements is found at Section 258 of the Act, 47 U.S.C. 258.

Total Annual Burden: 525 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impacts(s).

Needs and Uses: Pursuant to 47 CFR 64.1120 (e), a carrier acquiring all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification will file a letter specifying certain information with the Commission, in advance of the transfer, and it will also certify that the carrier will comply with required procedures, including giving advance notice to the affected subscribers. These streamlined carrier change rules balance the protection of consumers' interests with ensuring that the Commission's rules do not unnecessarily inhibit routine business transactions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–14179 Filed 6–11–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, June 15, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, June 16, 2010, at 11 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This hearing will be open to the public.

AUDIT HEARING: Georgia Federal Elections Committee.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Deputy Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, telephone: (202) 694–1220.

Darlene Harris,

Deputy Secretary of the Commission.

[FR Doc. 2010–14133 Filed 6–11–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Independent Bank Group, Inc., McKinney, Texas, to merge with Farmersville Bancshares, Inc., Farmersville, Texas, and thereby indirectly acquire First Bank, Farmersville, Texas.

Board of Governors of the Federal Reserve System, June 9, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–14157 Filed 6–11–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–09AX]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Survey of U.S. Long-Haul Truck Driver Injury and Health—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. The Occupational Safety and Health Act of 1970, Public Law 91–596 (section 20(a)(1)) authorizes NIOSH to conduct research to advance the health and safety of workers. In this capacity, NIOSH will conduct a national survey of long-haul truck drivers.

Truck drivers are at increased risk for numerous preventable diseases and health conditions; previous research suggests that truck drivers are at increased risk for lower back pain, heart disease, hypertension, stomach ulcers, and cancers of the bladder, lung,

prostate, and stomach. Truck drivers also face extraordinary risk of on-the-job mortality. In 2007, the fatality rate for "driver/sales workers and truck drivers" was 28.2 per 100,000 workers, compared with a rate of 3.8 per 100,000 for all workers. Drivers of heavy and tractor-trailer trucks had more fatal work injuries than any other single occupation (822 deaths in 2007).

Truck drivers experience high rates of occupational injury and illness, but little is known about the prevalence of factors suspected to place them at increased risk. Information is needed on the role of occupation in driver health and on mechanisms of driver injuries. In evaluating the potential health effects of the 2005 hours-of-service ruling, the Federal Motor Carrier Safety Administration stated that due to a lack of evidence specific to trucking operations, information from different fields had to be adapted to a trucking environment. Research needs cited by stakeholders include detailed data on the prevalence of selected health conditions and risk factors among truck drivers, and data on working conditions, injury causes and outcomes, and health behaviors.

NIOSH has obtained input on plans for this survey through stakeholder meetings, a webinar, an internet blog, and from comments received through NIOSH Docket 110 and during a focus group discussion with 7 truck drivers. The survey instrument has been reviewed by 6 subject matter experts and 9 cognitive interviews have been conducted using the survey instrument. Input received was used to guide development of the survey instrument and plans for survey implementation. Subjective data on understanding and phrasing of questions were collected during the focus group discussion and cognitive interviews.

The proposed national survey will be based upon a probability sample of truck stops. The survey will be conducted at locations along freight corridors in 5 geographic regions (Northeast, South, Great Lakes, Central, and West). The number of locations to be visited within each region will be related to the traffic load in that region. Eligible truck drivers stopping at selected truck stops will provide all survey data. The major objectives of the survey will be to: (1) Determine the prevalence of selected health conditions and risk factors; (2) characterize drivers' working conditions, occupational injuries, and health behaviors; (3) explore the associations among health status, individual risk factors, occupational injuries and occupational exposures related to work organization. The survey will eliminate significant gaps in occupational safety and health data for long-haul truck drivers. The results will assist regulatory agencies in focusing rulemaking, furnish industry and labor with safety and health information needed by their constituents, and stimulate future research and advocacy to benefit truck drivers.

The target population of drivers for this survey will be limited to drivers who: Have truck driving as their main job; drive a truck with 3 or more axles (requiring the driver to have a commercial driver's license); have been a heavy truck driver 12 months or longer; and who usually take at least one mandatory 10-hour rest period away from home during each delivery run.

The study instrument will be interviewer-administered to 2,457 eligible truck drivers at 50 truck stops. Individuals will first be asked a series of questions to determine if they are eligible to participate in the survey, followed by administration of the main interview. Individuals who do not wish to participate in the main interview will be given a short non-respondent interview. Respondents will not be asked to report names or any other identifying information.

The project supports the NIOSH surveillance function to advance the usefulness of surveillance information for the prevention of occupational injuries, illnesses, and hazards, and actively promote the dissemination and use of NIOSH surveillance data and information. This survey will allow NIOSH to explore the inter-relationships among dimensions of health status, individual risk factors, occupational injuries, sleep disorders, and occupational exposures. It will also provide detailed demographic data on long-haul truck drivers, which have not been available previously, and could provide baseline data to inform future cohort and prospective studies.

NIOSH will use the information to calculate prevalence and customize safety and health interventions for long-haul truck drivers. Once the study is completed, results will be made available via various means. There is no cost to respondents other than their time.

The total estimated annualized burden to respondents is 2,102 hours.

ANNUALIZED ESTIMATED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Truck Drivers	Eligibility Screening Interview	3500	1	2/60
	Non-respondent Interview	560	1	2/60
	Main Interview	2457	1	48/60

Dated: June 8, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–14158 Filed 6–11–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0258]

Agency Information Collection Activities; Proposed Collection; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; Submission of Information to a Master File in Support of Petitions; Electronic Submission Using Food and Drug Administration Form 3503

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations for submission of petitions, including food and color additive petitions (including labeling) and generally recognized as safe (GRAS) affirmations, submission of information to a Master File in support of petitions, and electronic submission using FDA Form 3503. This notice also notifies the public of and solicits comments on FDA's proposed changes to Form FDA 3503 and elimination of Form FDA 3504.

DATES: Submit either electronic or written comments on the collection of information by August 13, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), and GRAS Affirmation; Submission of Information to a Master File in Support of Petitions; Electronic Submission Using FDA Form 3503—21 CFR 70.25, 71.1, 170.35, 171.1, 172, 173, 179, and 180 (OMB Control Number 0910–0016)—Revision

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of the act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the act is effective. Food additive petitions (FAPs) are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 179, and 180 (21 CFR parts 172, 173, 179, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Color additive petitions (CAPs) are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 of the agency's regulations (21 CFR 71.1) specifies the information that a petitioner must submit to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

FDA scientific personnel review FAPs to ensure the safety of the intended use of the additive in or on food or that may be present in food as a result of its use in articles that contact food. Likewise, FDA personnel review color additive petitions to ensure the safety of the color additive prior to its use in food, drugs, cosmetics, or medical devices.

Under section 201(s) of the act (21 U.S.C. 321(s)), a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures

or common use in food. The act historically has been interpreted to permit food manufacturers to make their own initial determination that use of a substance in food is GRAS and thereafter seek affirmation of GRAS status from FDA. FDA reviews petitions for affirmation of GRAS status that are submitted on a voluntary basis by the food industry and other interested parties under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 342, 348, and 371). To implement the GRAS provisions of the act, FDA has set forth procedures for the GRAS affirmation petition process in § 170.35(c)(1) of its regulations (21 CFR 170.35(c)(1)). While the GRAS affirmation petition process still exists, FDA has not received a GRAS affirmation petition since the establishment of the voluntary GRAS notification program and is not expecting any during the period covered by this proposed extension of collection of information.

Currently, interested persons may transmit regulatory submissions to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3503 for FAP and Form FDA 3504 for CAP. FDA is revising Form FDA 3503 to better enable its use for electronic submission and to permit its use for multiple types of submissions, which eliminates the need for Form FDA 3504. Because Form FDA 3503 helps the respondent organize their submission to focus on the information needed for FDA's safety review, FDA now recommends that this form be used for FAPs and CAPs, whether submitted in electronic format or paper format. FDA estimates that the amount of time for respondents to complete the revised FDA Form 3503 will continue to be 1 hour. The revised Form FDA 3503 can be used to submit information to FDA in electronic format using the Electronic Submission Gateway portal. The revised Form FDA 3503 can be used to substitute for the "Dear Sir" section of 21 CFR 71.1(c) for a CAP and 21 CFR 171.1(c) for an FAP. The revised Form FDA 3503 provides for submitters to indicate the date of their most recent presubmission consultation activity with FDA. The revised Form FDA 3503 can also be used to organize information within a Master File submitted in support of petitions according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to the agency, thus minimizing paperwork burden for food and color additive approvals. The revised Form FDA 3503 is formatted to accept submissions for both FAP and CAP, thus making Form FDA 3504 redundant for collecting CAP submissions. Therefore, FDA is eliminating Form FDA 3504.

Description of respondents: Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDA Form	No. of Respond-ents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Operating & Maintenance Costs	Total Hours
CAPs						
70.25,71	2	1	2	1,337	$5,600	2,674
GRAS Affirmation Petitions						
170.35	1 or fewer	1	1 or fewer	2,614	0	2,614
FAPs						
171.1	3	1	3	7,093	0	21,279
FDA Form 3503	6	1	6	1	0	6
Total					$5,600	26,573

[1] There are no capital costs associated with this collection of information.

The estimate of burden for food additive, color additive, or GRAS affirmation petitions is based on FDA's experience and the average number of new petitions received in calendar years 2006, 2007, 2008, and 2009, and the total hours expended in preparing the petitions. In compiling these estimates, FDA consulted its records of the number of petitions received in the past four years. The figures for hours per response are based on estimates from experienced persons in the agency and in industry. Although the estimated hour burden varies with the type of petition submitted, an average petition involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Color additives are subjected to payment of fees for the petitioning process. The listing fee for a color additive petition ranges from $1,600 to $3,000, depending on the intended use of the color and the scope of the requested amendment. A complete schedule of fees is set forth in 21 CFR 70.19. An average of one Category A and one Category B color additive petition is expected per year. The maximum color additive petition fee for a Category A petition is $2,600 and the maximum color additive petition fee for a Category B petition is $3,000. Because an average of 2 color additive petitions are expected per calendar year, the estimated total annual cost burden to petitioners for this startup cost would be less than or equal to $5,600 (1 x $2,600 + 1 x $3,000 listing fees = $5,600). There are no capital costs associated with color additive petitions.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the act and other specific labeling acts administered by FDA. Label information

does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for § 70.25 and § 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 179, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: June 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14155 Filed 6–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. Ruth L. Kirschstein NRSA Institutional Research Training Grants.

Date: June 24, 2010.

Time: 1 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roy L White, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892–7924, 301–435–0310, *whiterl@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Comparative Effectiveness Research in Clinical Hypertension Management.

Date: June 24, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Chang Sook Kim, PhD, Scientific Review Officer, Review Branch, DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892, 301–435–0287, *carolko@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14188 Filed 6–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Rehabilitation Sciences.

Date: July 9, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.

Date: July 9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Psychopathology, Developmental Disabilities, Stress and Aging.

Date: July 9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins, 1 Nob Hill, San Francisco, CA 94108.

Contact Person: Kathlyn Robbins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *robbinsk@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: BGES and NAME.

Date: July 9, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Rehabilitation Sciences.

Date: July 9, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.

Date: July 12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Kenneth A Roebuck, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Imaging.

Date: July 12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dharam S Dhindsa, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Imaging.

Date: July 13, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel and Executive Meeting Center, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguopfen@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: July 13–14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA OD10–007: Frameworks in Global Health.

Date: July 13, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Latham Hotel, 3000 M Street, NW.,Washington, DC 20007.

Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7808, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.

Date: July 14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–TW–10–008: Medical Education Partnership Initiative (MEPI) Review.

Date: July 14–15, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7843, Bethesda, MD 20892, 301–408–9164, *gerendad@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Asthma and Allergic Airways Disease Applications.

Date: July 14, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14190 Filed 6–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Consequences of HIV/AIDS Study Section.

Date: July 6–7, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mark P Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005 Director's Opportunity 5 Themes.

Date: July 7, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: July 8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: July 9, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Therapeutics.

Date: July 9, 2010.

Time: 10 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Lambratu Rahman, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.
Date: July 12–13, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Clift Hotel, 495 Geary Street, San Francisco, CA 94102.
Contact Person: Alexander D Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS-associated Opportunistic Infections and Cancer Study Section.
Date: July 15, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin Seattle, 1900 5th Avenue, Seattle, WA 98101.
Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Genes, Genomes, and Genetics.
Date: July 15, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genes, Genomes and Genetics SEP.
Date: July 15, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Michael K. Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.
Date: July 15–16, 2010.
Time: 8 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Lawrence E Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Normal and Oncogenic Cellular Signaling.
Date: July 15–16, 2010.
Time: 10 a.m. to 10 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Oral Microbiology, Immunology, Cell Biology and Periodontal Diseases.
Date: July 15, 2010.
Time: 3:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.
Date: July 16, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7846, Bethesda, MD 20892, 301–402–6411, *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Nephrology.
Date: July 16, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14191 Filed 6–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, July 14, 2010, 8 a.m. to July 14, 2010, 4 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 19, 2010, 75FR28028.

The meeting is cancelled due to scheduling conflicts.

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14192 Filed 6–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Translational Research Program Grant Review Panel.

Date: July 16, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Officer, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *kenshalod@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory, Committee Policy.

[FR Doc. 2010–14193 Filed 6–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cancer Molecular Therapy.

Date: June 17, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Syed M Quadri, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14196 Filed 6–11–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0168]

Developing Guidance on Naming, Labeling, and Packaging Practices to Reduce Medication Errors; Public Workshop; Change of Meeting Location

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a change in location for the upcoming public workshop entitled "Developing Guidance on Naming, Labeling, and Packaging Practices to Reduce Medication Errors." A new address is given for those attending the workshop.

DATES: The public workshop will be held on Thursday and Friday, June 24 and 25, 2010, from 8:30 a.m. to 5 p.m. each day.

ADDRESSES: The public workshop will be held at the Holiday Inn College Park, 10000 Baltimore Ave., College Park, MD 20740.

FOR FURTHER INFORMATION CONTACT: Colleen O'Malley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4305, Silver Spring, MD 20993–0002, 301–796–1786, FAX: 301–796–9832, e-mail: *colleen.omalley@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 12, 2010 (75 FR 18514), FDA issued a notice announcing a public workshop that is intended to assist the agency in developing draft guidance for industry on describing practices for naming, labeling, and packaging drugs and biologics to reduce medication errors. The April 12, 2010, notice invited individuals interested in presenting to the panelists to register by May 25, 2010. Registration to present at the workshop is closed. All others are welcome to attend on a first-come, first-served basis.

Because of a greater than anticipated response for attending the public workshop, FDA is announcing in this notice a new location.

II. New Location for the Public Workshop

The new location will be the Holiday Inn College Park (see **ADDRESSES**). Directions and information on parking, accommodations, and transportation options can be found at *www.holidayinncollegepark.com*.

Dated: June 8, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14153 Filed 6–11–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Science and Technology (S&T) Directorate

[Docket No. DHS–2010–0043]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS) Science and Technology Protected Repository for the Defense of Infrastructure against Cyber Threats (PREDICT) Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security invites the general public to comment on data collection forms for the Protected Repository for the Defense of Infrastructure Against Cyber Threats (PREDICT) initiative. PREDICT is an initiative to facilitate the accessibility of computer and network operational data for use in cybersecurity defensive research and development. Specifically, PREDICT provides developers and evaluators with regularly updated network operations data sources relevant to cybersecurity defense technology development. The data sets are intended to provide developers with timely and detailed insight into cyberattack phenomena occurring across the Internet and in some cases will reveal the effects of these attacks on networks that are owned or managed by

the data producers. A key motivation of PREDICT is to make these data sources more widely available to technology developers and evaluators, who today often determine the efficacy of their technical solutions on anecdotal evidence or small-scale test experiments, rather than on more comprehensive real-world data. The PREDICT Web site *http://www.predict.org/* contains an overview and general information as background, along with the data repository. As specified on the Web site, access to the PREDICT data repository is available to eligible research groups upon approval of their applications. In addition to helping to determine whether a group is eligible to access the repository, the forms will also manage the interactions between the PREDICT portal administrators and the research groups accessing the PREDICT portal. The Department is committed to improving its PREDICT initiative and invites interested persons to comment on the following forms and instructions (hereinafter "Forms Package") for the PREDICT initiative: (1) Account Request Form (DHS Form 10029 (12/07)); (2) Request a Dataset Form (DHS Form 10032 (12/07)); (3) My Datasets Form (DHS Form 10033 (12/07)); (4) Memorandum of Agreement—PREDICT (PCC) Coordinating Center and Researcher/User (DHS Form 10035 (12/07)); (5) Memorandum of Agreement PREDICT Coordinating Center (PCC) and Data Provider (DP) (DHS Form 10036 (12/07)); (6) Memorandum of Agreement—PCC and Data Host (DH)(DHS Form 10037 (12/07)); (7) Authorization Letter for Data Host (DHS Form 10038 (12/07)); (8) Authorization Letter for Data Provider (DHS Form 10039 (12/07)); (9) Sponsorship Letter (DHS Form 10040 (12/07)); (10) Notice of Dataset Access/Application Expiration (DHS Form 10041 (12/07)); (11) Notice for Certificate of Data Destruction (DHS Form 10042 (12/07)). Two new forms are also included—(12) Amendment to Research/User Agreement (10060 (04/10)); (13) Notice of Data Access Expiration (10061 (04/10)).

This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until August 13, 2010.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2010–0043, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *E-mail: jeffery.harris@dhs.gov.* Please include docket number DHS–2010–0043 in the subject line of the message.
- *Fax:* (202) 254–6171 (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: OCIO—Jeffery Harris, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Jeffery Harris (202) 254–6015 (Not a toll-free number).

SUPPLEMENTARY INFORMATION: Interested parties can obtain copies of the Forms Package by calling or writing the point of contact listed above. The content of PREDICT is proprietary datasets that will be used by the Research community in its efforts to build products and technologies that will better protect America's computing infrastructure. Using a secure Web portal, accessible through *https://www.predict.org/,* the PREDICT Coordinating Center manages a centralized repository that identifies the datasets and their sources and location, and acts as gatekeeper for access and release of the data. All data input to the system is either keyed in by users (Data Providers) or migrated (via upload of XML files).

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The user will complete a portion of the forms online and submit them through the Web site, while some forms will be printed from the Web site and faxed to a PREDICT portal administrator. The entire Forms Package will be available on the PREDICT Web site found at *https://www.predict.org.*

Overview of This Information Collection

(1) *Type of Information Collection:* Information Collection Revision.

(2) *Title of the Form/Collection:* DHS S&T PREDICT Initiative.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: DHS Science and Technology Directorate, (1) Account Request Form (DHS Form 10029 (12/07)); (2) Request a Dataset Form (DHS Form 10032 (12/07)); (3) My Datasets Form (DHS Form 10033 (12/07)); (4) Memorandum of Agreement—PREDICT (PCC) Coordinating Center and Researcher/User (DHS Form 10035 (12/07)); (5) Memorandum of Agreement PREDICT Coordinating Center (PCC) and Data Provider (DP) (DHS Form 10036 (12/07)); (6) Memorandum of Agreement—PCC and Data Host (DH)(DHS Form 10037 (12/07)); (7) Authorization Letter for Data Host (DHS Form 10038 (12/07)); (8) Authorization Letter for Data Provider (DHS Form 10039 (12/07)); (9) Sponsorship Letter (DHS Form 10040 (12/07)); (10) Notice of Dataset Access/Application Expiration (DHS Form 10041 (12/07)); (11) Notice for Certificate of Data Destruction (DHS Form 10042 (12/07)). Two new forms are also included—(12) Amendment to Research/User Agreement (10060 (04/10)); (13) Notice of Data Access Expiration (10061 (04/10)).

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal government, and State, local, or tribal government; the data gathered will allow the PREDICT initiative to provide a central repository, accessible through a Web-based portal (*https://www.predict.org/*) that catalogs current computer network operational data, provides secure access to multiple sources of data collected as a result of use and traffic on the Internet, and facilitates data flow among PREDICT participants for the purpose of developing new models, technologies and products that support effective threat assessment and increase cyber security capabilities.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 206.

b. *An estimate of the time for an average respondent to respond:* 8 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 118 burden hours.

Dated: June 3, 2010.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2010–14230 Filed 6–11–10; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0040]

Science and Technology (S&T) Directorate; Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS) Science and Technology TechSolutions Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The TechSolutions Program was established by the Department of Homeland Security's (DHS's) Science and Technology (S&T) Directorate to provide information, resources and technology solutions that address mission capability gaps identified by the emergency response community. The goal of TechSolutions is to field technologies that meet 80% of the operational requirement, in a 12 to 15 month time frame, at a cost commensurate with the proposal. Goals will be accomplished through rapid prototyping or the identification of existing technologies that satisfy identified requirements. Through the use of data collection forms, TechSolutions will collect submitter and capability gap information from First Responders (Federal, State, Local, and Tribal Police, Firefighters, and Emergency Medical Service) through the TechSolutions Web site. The information will be used to address reported capability gaps, leading to improved safety and productivity. The DHS invites interested persons to comment on the following forms and instructions (hereinafter "Forms Package") for the TechSolutions program: (1) Submit a Capability Gap (DHS Form 10011 (04/07)), (2) Information Request (DHS Form 10012 (04/07)), and (3) Register (DHS Form 10015 (04/07)). Section 313 of the Homeland Security Act of 2002 (PL 107–296) established this requirement.

This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until August 13, 2010.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2010–0040, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *E-mail: jeffery.harris@dhs.gov.* Please include docket number DHS–2010–0040 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number.)
- *Mail:* Science and Technology Directorate, *Attn:* OCIO—Jeffery Harris, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Jeffery Harris (202) 254–6015 (not a toll free number).

SUPPLEMENTARY INFORMATION: Please note that the Forms Package includes three forms for collecting submitter and capability gap information from first responders (federal, state, local, and tribal police, firefighters, and emergency medical service). As explained herein, these separate forms are intended to be flexible and permit DHS S&T to address reported capability gaps, leading to improved safety and productivity without undue bureaucratic burden. The Department is committed to improving its TechSolutions processes and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act. DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Forms Package will be available on the Tech Solutions Web site found at (*https://www.techsolutions.dhs.gov*). The user will complete the forms online and submit them through the Web site.

Overview of This Information Collection

(1) *Type of Information Collection:* Information Collection Revision.

(2) *Title of the Form/Collection:* TechSolutions Submit a Capability Gap, Information Request, and Register.

Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: DHS Science and Technology Directorate, Submit a Capability Gap (DHS Form 10011 (04/07), Information Request (DHS Form 10012 (04/07), and Register (DHS Form 10015 (04/07).

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government; the data collected through the TechSolutions Forms Package will be used to address reported capability gaps, leading to improved safety and productivity for first responders.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 391.

b. *An estimate of the time for an average respondent to respond:* .42 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 39 burden hours.

Dated: June 3, 2010.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2010–14231 Filed 6–11–10; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary: Sport Fishing and Boating Partnership Council Charter

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Renewal.

SUMMARY: This notice is published in accordance with the Federal Advisory Committee Act (Act). Following consultation with the General Services Administration, the Secretary of the Interior has renewed the Sport Fishing and Boating Partnership Council (Council) charter for 2 years.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, U.S. Fish and Wildlife Service (Service), (703) 358–2336.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to provide advice to the Secretary of the Interior through the Director, Fish and Wildlife Service to assist the Department of the Interior (Department) and the Service increase public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating.

The Council will represent the interests of the sport fishing and boating constituencies and industries and will consist of no more than 18 members and up to 16 alternates appointed by the Secretary to assure a balanced, cross-sectional representation of public and private sector organizations. The Council will consist of two ex-officio members: Director, the Service, and the President, Association of Fish and Wildlife Agencies (AFWA). The 16 remaining members will be appointed at the Secretary's discretion to achieve balanced representation for recreational fishing and boating interests. The membership will comprise senior-level representatives of recreational fishing, boating, and aquatic resource conservation. These appointees must have demonstrated expertise and experience in one or more of the following areas of national interest groups: State fish and wildlife resource management agencies; saltwater and freshwater recreational fishing organizations; recreational boating organizations; recreational fishing and boating industries; recreational fishery resources conservation organizations; tribal resource management organization; aquatic resource outreach and education organizations; and tourism industry.

The Council will function solely as an advisory body and in compliance with provisions of the Act (5 U.S.C. Appendix 2). The certification for renewal is published below.

In accordance with the Act, we have filed a copy of the Council's charter with the Committee Management Secretariat; General Services Administration; Committee on Environmental and Public Works; United States Senate; Committee on Natural Resources; United States House of Representatives; and the Library of Congress.

Certification

I hereby certify that the renewal of the Sport Fishing and Boating Partnership Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to, the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k), Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j) in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the U.S. Fish and Wildlife Service's mission to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

The Council will assist the Secretary and the Department by providing advice on activities to enhance fishery and aquatic resources.

Dated: May 28, 2010.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–14142 Filed 6–11–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006220 L99110000.EK0000]

Renewal of Approved Information Collection, OMB Control Number 1004–0179

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request that the Office of Management and Budget (OMB) renew its approval to collect helium sales information from helium suppliers. This information collection activity was previously approved by the OMB, and assigned control number 1004–0179.

DATES: Please submit your comments to the BLM at the address below on or before August 13, 2010.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401–LS, 1849 C St., NW., Washington, DC 20240, Attention: 1004–0179. You may also send comments to Jean Sonneman by fax at 202–912–7102, or by e-mail at: *Jean_Sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact Leslie Theiss, at 806–356–1002. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact Ms. Theiss. You may also contact Ms. Theiss to obtain a copy, at no cost, of the regulations pertaining to this collection of information.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR part 3195. The BLM will request that the OMB approve this information collection activity for a 3-year term.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the BLM's submission of the information collection request to OMB.

The following information is provided for the information collection:

Title: Helium Contracts (43 CFR part 3195).

OMB Control Number: 1004–0179.

Summary: This collection of information pertains to the Helium Privatization Act of 1996, which provides that only authorized contractors may sell helium to Federal agencies. The BLM uses this information to verify that authorized contractors are in compliance with the Helium Privatization Act.

In order to become an authorized contractor, a helium supplier must enter into an In-Kind Crude Helium Sales Contract to purchase from the Secretary of the Interior amounts of crude helium that are equivalent to amounts the supplier sells to agencies of the Federal Government. 50 U.S.C. 167d. Additional information collection and recordkeeping requirements apply to deliveries, purchases, and uses of helium.

In the past, the BLM has provided Form 1422X–922 as a convenience for respondents to comply with some of these requirements, but the pertinent regulations do not require that they use that form. In the BLM's experience, Form 1422X–922 has been of little

practical utility—typically, respondents have demonstrated compliance with the Helium Privatization Act without using the form, and the BLM has found that the form is not necessary in order to collect the necessary information. The BLM is considering eliminating Form 1422X–922, although the BLM will continue to require respondents to submit pertinent information through written or electronic means as required by 43 CFR part 3195.

Frequency of Collection: Quarterly, annually, and on occasion.

Estimated Number and Description of Respondents: Eight authorized contractors.

Currently Approved Reporting and Recordkeeping "*Hour*" *Burden:* The currently approved annual reporting burden is 40 responses and 160 hours.

Currently Approved Reporting and Recordkeeping "*Non-Hour Cost*" *Burden:* $0.

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–14212 Filed 6–11–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N119; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before July 14, 2010.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; *see* **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–053736–1

Applicant: Barbara A Garrison, Tucson, Arizona.

The applicant requests an amendment to an existing permit (March 29, 2002, 67 FR 15222) to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–118641

Applicant: Jodi McGraw Consulting, Corralitos, California.

The applicant requests an amendment to an existing permit (April 19, 2006, 71 FR 20121) to take (capture and release) the Zayante band-winged grasshopper (*Trimerotropis infantilis*) and Mount Hermon June beetle (*Polyphylla barbata*) in conjunction with habitat maintenance and restoration activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–107075

Applicant: Steven Powell, San Pablo, California.

The applicant requests an amendment to an existing permit (August 9, 2005, 70 FR 46185) to take (survey, capture, handle, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) and take (survey, capture, handle, kill and remove from the wild) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys, population monitoring, and habitat enhancement activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–12537A

Applicant: Daniella J. Dekelaita, Monte Rio, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in Sonoma and Santa Barbara Counties, California, for the purpose of enhancing its survival.

Permit No. TE–12511A

Applicant: Kathryn M. Allan, San Francisco, California.

The applicant requests a permit to take (survey, capture, handle, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with surveys and population monitoring activities throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–14231A

Applicant: Caesara W. Brungraber, San Diego, California.

The applicant requests a permit to take (capture, collect, and kill) the Riverside fairy shrimp (*Streptocephalus wootoni*) and the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in

conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–045994

Applicant: U.S. Geological Survey, Biological Resources Division, Western Ecological Research Center, San Diego Field Station, San Diego, California.

The applicant requests an amendment to an existing permit (July 7, 2009, 74 FR 32179) to take, (transport and release) the mountain yellow-legged frog (*Rana muscosa*) in conjunction with a captive breeding and translocation program in Riverside, San Bernardino, and Los Angeles Counties, California, for the purpose of enhancing its survival.

Permit No. TE–14237A

Applicant: Wildlife Science Center, Livermore, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing its survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Michael Long,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. 2010–14165 Filed 6–11–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Klamath Hydroelectric Settlement Agreement, Including Secretarial Determination on Whether to Remove Four Dams on the Klamath River in California and Oregon

AGENCY: Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, and the California Environmental Quality Act (CEQA), the Department of the Interior (Department), through the Bureau of Reclamation (Reclamation), and the California Department of Fish and Game (CDFG) intend to prepare an EIS/EIR. The Department and CDFG will conduct public scoping meetings to solicit comments concerning the issues, alternatives, and analyses to be considered in the evaluation of whether to remove four dams on the Klamath River pursuant to the terms of the Klamath Hydroelectric Settlement Agreement (KHSA). Section 3.3.1 of the KHSA states: "Based upon the record, environmental compliance and other actions described in Section 3.2, and in cooperation with the Secretary of Commerce and other Federal agencies as appropriate, the Secretary shall determine whether, in his judgment, the conditions of Section 3.3.4 have been satisfied, and whether, in his judgment, Facilities Removal (i) will advance restoration of the salmonid fisheries of the Klamath Basin, and (ii) is in the public interest, which includes but is not limited to consideration of potential impacts on affected local communities and Tribes."

In light of this potential determination by the Secretary of the Interior (Secretary) pursuant to the KHSA, the public and agencies are invited to comment on the scope of the EIS/EIR and potential alternatives including, but not limited to: (1) How other potential actions within the KHSA should be analyzed in this EIS/EIR, and (2) the nature and extent to which the potential environmental impacts of implementing the Klamath Basin Restoration Agreement (KBRA) should be analyzed in this EIS/EIR.

DATES: Written comments on the scope of the EIS/EIR and potential alternatives to be analyzed are requested within 30 days of the publication of this notice. Oral comments will also be accepted during the public scoping meetings. Please see the **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates and locations.

ADDRESSES: Please send written comments to Ms. Tanya Sommer, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, or by e-mail to *KlamathSD@usbr.gov*. Written comments may also be submitted during the public scoping meetings. Please see the **SUPPLEMENTARY INFORMATION** section for meeting locations and dates.

FOR FURTHER INFORMATION CONTACT: Ms. Tanya Sommer, Bureau of Reclamation, 916–978–6153, *TSommer@usbr.gov,* for technical information. For public involvement information, please contact Mr. Matt Baun, U.S. Fish and Wildlife Service, 530–841–3119, *Matt_Baun@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Conflicts over water and other natural resources in the Klamath Basin between conservationists, tribes, farmers, fishermen, and State and Federal agencies have existed for decades. In particular, several developments affecting the Klamath Basin have occurred in the last several years. These developments include:

—In 2001, water deliveries to irrigation contractors to Reclamation's Klamath Project were substantially reduced.
—In 2002, returning adult salmon suffered a major die-off.
—In 2006, the commercial salmon fishing season was closed along 700 miles of the West Coast to protect weak Klamath River stocks.
—In 2010, due to drought conditions, the project is forecasting a curtailment of deliveries that could result in the potential short-term idling of farmland and increased groundwater pumping.
—In 2010, the c'waam (Lost River suckers) fishery for the Klamath Tribes has been closed for the 24th year, limiting the Tribes to only a ceremonial harvest.

Since 2003, the United States has spent over $500 million in the Klamath Basin for irrigation, fisheries, National Wildlife Refuges, and other resource enhancements and management actions. Consequently, the United States, the States of California and Oregon, the Klamath, Karuk, and Yurok Tribes, Klamath Project Water Users, and other Klamath River Basin stakeholders negotiated the KBRA and the KHSA (including the Secretarial Determination) to resolve long-standing disputes between them regarding a broad range of natural resource issues. The agreements are intended to result in effective and durable solutions which: (1) Restore and sustain natural fish production and provide for full participation in ocean and river harvest of fish species throughout the Klamath Basin; (2) establish reliable water and power supplies which sustain agricultural uses, communities, and National Wildlife Refuges; and (3) contribute to the public welfare and the sustainability of all Klamath Basin communities. It is the conclusion of the United States that in order to reach these goals, both agreements must be authorized and implemented.

Ongoing programs that may be expanded include habitat restoration and fish population monitoring

activities being conducted by Federal, Tribal, and State governments and agencies, fish disease research activities, continued implementation of Reclamation's Pilot Water Bank Program, and programs to improve fish passage and screen irrigation diversions.

New programs that may be established by the KBRA include a Fisheries Restoration Plan, Fisheries Reintroduction Plan, Fisheries Monitoring Plan, Water Diversion Limitation and Pumping Plan, Water Rights Purchase Plan, Drought Plan, Environmental Water Plan, Counties' Impacts-Mitigation and Benefits Program, Tribal Programs, establishment of wildlife refuge water allocation, and additional water conservation and storage actions.

The KHSA lays out the process for additional studies, environmental review, and a decision by the Secretary regarding whether removal of four dams owned by PacifiCorp: (1) Will advance the restoration of the salmonid fisheries of the Klamath Basin, and (2) is in the public interest, which includes, but is not limited to, consideration of potential impacts on affected local communities and tribes.

Purpose and Need and Proposed Action

The purpose of the proposed Federal action is to advance restoration of the salmonid fisheries in the Klamath Basin that is in the public interest, and is consistent with the KHSA and the KBRA. Pursuant to the KHSA, the Secretary needs to make a determination whether to proceed with the removal of the four PacifiCorp Dams on the Klamath River. The proposed action is to make a determination, pursuant to the KHSA, as to whether removal of the four lower dams on the Klamath River to achieve a free-flowing condition and allow full volitional passage of fish is in the public interest, will advance restoration of the salmonid fishery and is consistent with statutory obligations and tribal rights. The potential impacts of any connected actions, including any such actions under the KBRA, will be analyzed.

Environmental Issues and Resources To Be Examined

The EIS/EIR will be used to inform the Secretary when making his decision regarding implementation of the KHSA and any potential follow-on programs that may be implemented as part of the KBRA. If, pursuant to the KHSA, the Secretary's decision is affirmative, the EIS/EIR will be used by the Governors of the States of California and Oregon to inform each whether to concur in that determination. The EIS/EIR will include analysis and disclosures of the effects on the quality of the human and physical environment that may occur as a result of implementation of the KHSA and any potential follow-on programs including those programs in the KBRA. Issues to be addressed may include, but are not limited to, impacts on biological resources, historic and archaeological resources, geomorphology, hydrology, water quality, air quality, safety, hazardous materials and waste, visual resources, socioeconomics, including real estate, and environmental justice.

Public Scoping Sessions

The Department and CDFG will hold six public information and scoping meetings according to the dates and locations listed below. Oral and written comments will be accepted at the public meetings.

Dates, Times, and Locations:

- Wednesday, July 7, 2010, 10 a.m. to 1 p.m., Copco Community Center, 27803 Copco Road, Montague, CA 96064.
- Wednesday, July 7, 2010, 6 p.m. to 9 pm, Yreka Community Center, 810 N. Oregon Street, Yreka, CA 96097.
- Thursday, July 8, 2010, 6 p.m. to 9 p.m., Klamath County Fairgrounds, 3531 S. 6th Street, Klamath Falls, OR 97603.
- Friday, July 9, 2010, 6 p.m. to 9 p.m., Chiloquin Community Center, 140 First Street, Chiloquin, OR 97624.
- Tuesday, July 13, 2010, 6 p.m. to 9 p.m., Chetco Activities Center, 550 Chetco Way, Brookings, OR 97415.
- Wednesday, July 14, 2010, 6 p.m. to 9 p.m., Arcata Community Center, 321 Community Park Way, Arcata, CA 95521.
- Thursday July 15, 2010, 6 p.m. to 9 p.m., Karuk Tribe Community Room, 39051 Highway 96, Orleans, CA 95556.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, please be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 7, 2010.

Dennis Lynch,

Program Manager, Klamath Basin Secretarial Determination.

[FR Doc. 2010–14174 Filed 6–11–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of filing of plat of survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM—Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fourth Principal Meridian, Minnesota

T. 49 N., R 18 W.

The plat of survey represents the corrective dependent resurvey of a portion of the North boundary, a portion of the West boundary, a portion of the subdivisional lines, and the subdivision of Section 6, in Township 49 North, Range 18 West, of the Fourth Principal Meridian, in the State of Minnesota, and was accepted April 22, 2010.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: *June 7, 2010.*

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2010–14168 Filed 6–11–10; 8:45 am]

BILLING CODE 4310–GJ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Review)]

Ironing Tables and Certain Parts Thereof From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty on ironing tables and certain parts thereof from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 1, 2009 (74 FR 31755, July 2, 2009) and determined on October 5, 2009 that it would conduct a full review (74 FR 54066, October 21, 2009). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 30, 2009 (74 FR 62593). The hearing was held in Washington, DC, on April 13, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on June 8, 2010. The views of the Commission are contained in USITC Publication 4155 (June 2010), entitled *Ironing Tables and Certain Parts Thereof From China: Investigation No. 731–TA–1047 (Review).*

Issued: June 8, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14147 Filed 6–11–10; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Collection Bureau of Justice Assistance Application Form: Federal Law Enforcement Officers Congressional Badge of Bravery.

The Department of Justice (DOJ), Office of Justice Programs (OJP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed collection information is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** [Volume 75, Number 72, page 19659, on April 15, 2010,] allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Berry at 202–616–6500/1–866–268–0079, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street, NW., Washington, DC 20531 via facsimile at 202–305–1367 or by e-mail at *M.A.Berry@ojp.usdoj.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Federal Law Enforcement Officers Congressional Badge of Bravery.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law enforcement officials.

Abstract: The information collected on this application will provide for the nomination of law enforcement officers for the Federal, and the State and Local Congressional Badge of Bravery awards. The awards will recognize law enforcement officers who (1) were injured while engaged in lawful duties and performing an act of bravery that put such officer at personal risk; or (2) though not injured; performed an act of bravery that placed such officer at risk of serious physical injury or death.

Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* An estimate 200 applications/nominations for each Board has been adopted from a similar awards program and will be used for the Federal Law Enforcement Officers Congressional Badge of Bravery. The applicant should take approximately 25 minutes to gather the required information and complete the form. Actual preparation time is dependent on the number of nominees per application.

(6) *An estimate of the total public burden (in hours) associated with the collection is 83 hours. Total Annual Reporting Burden:* 200×25 minutes = 5,000 minutes/60 = 83.33 hours for each award category.

If additional information is required, please contact, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 8, 2010.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2010–14119 Filed 6–11–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0042]

Agency Information Collection Activities: Proposed Collection; Comments Requested: National Clandestine Laboratory Seizure Report

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 72, page 19658 on April 15, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until July 14, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged.

Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of Information Collection 1117–0042

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

(3) *Agency form number, if any and the applicable component of the Department sponsoring the collection:*

Form number: EPIC Form 143.

Component: El Paso Intelligence Center, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State, Local or Tribal Government.

Other: None.

Abstract: Records in this system are used to provide clandestine laboratory seizure information to the El Paso Intelligence Center, Drug Enforcement Administration, and other Law enforcement agencies, in the discharge of their law enforcement duties and responsibilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are one thousand twenty-seven (1027) total respondents for this information collection. Three thousand seven hundred fifty-four (3754) responded using paper at 1 hour a response and five thousand four hundred seven (5407) responded electronically at 1 hour a response, for nine thousand one hundred sixty-one (9161) annual responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 9161 annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 8, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–14117 Filed 6–11–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Bemis Company, Inc., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Bemis Co. et al.,* Civil Action No. 1:10–CV–00295–CKK, which were filed in the United States District Court for the District of Columbia on June 7, 2010, together with the response of the United States to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

J. Robert Kramer II,

Director of Operations and Civil Enforcement.

United States District Court for the District of Columbia United States of America, Plaintiff, v. Bemis Company, Inc., and Rio Tinto PLC, and Alcan Corporation, Defendants.

Case No.: 1:10–CV–00295.
Judge: Kollar-Kotelly, Colleen.
Deck Type: Antitrust.
Date Stamp:

Response of Plaintiff United States to Public Comments on the Proposed Final Judgment

Pursuant to the requirements of the Antitrust Procedures and Penalties Act,

15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), the United States hereby responds to the public comments received regarding the proposed Final Judgment in this case. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comments and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

On February 24, 2010, the United States filed the Complaint in this matter alleging that the proposed acquisition of the Alcan Packaging Food Americas business of Rio Tinto plc ("Rio Tinto") by Bemis Company, Inc. ("Bemis") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and a Hold Separate Stipulation and Order ("HSSO") signed by plaintiff and the defendants, consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. 16. Pursuant to those requirements, the United States filed its Competitive Impact Statement ("CIS") in this Court, also on February 24, 2010; published the proposed Final Judgment and CIS in the **Federal Register** on March 4, 2010, *see United States* v. *Bemis Company, Inc. et al.,* 75 FR 9929; and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in The Washington Post for seven days beginning on March 10, 2010 and ending on March 16, 2010. The 60-day period for public comments ended on May 15, 2010; three comments were received as described below and attached hereto.

I. The Investigation and Proposed Resolution

On July 5, 2009, Bemis and Rio Tinto entered into an agreement for Bemis to acquire the Alcan Packaging Food Americas business ("Alcan") from Rio Tinto. For the next seven months, the United States Department of Justice ("Department") conducted an extensive, detailed investigation into the likely competitive effects of the Bemis/Rio Tinto transaction. As part of this investigation, the Department obtained substantial documents and information from the merging parties and issued 21 Civil Investigative Demands to third parties. In all, the Department received and considered more than 35 boxes of hard copy material and over 682,000 electronic documents. The Department also conducted over 44 primary interviews and multiple follow-up interviews with customers, competitors, and other individuals with knowledge of the flexible-packaging industry. The investigative staff carefully analyzed the information provided and thoroughly considered all of the issues presented. The Department considered the potential competitive effects of the transaction on the development, production, and sale of flexible packaging sold in North America, and concluded that Bemis's acquisition of Alcan likely would substantially lessen competition in the development, production, and sale of flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat in the United States and Canada.

As explained more fully in the Complaint and CIS, the acquisition of Alcan by Bemis would have substantially increased concentration and lessened competition in the development, production, and sale of flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale and flexible-packaging shrink bags for fresh meat in the United States and Canada. The acquisition effectively would have reduced the number of suppliers of flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale from two to one, would have eliminated competition between Bemis and Alcan with respect to those products, and would have increased the likelihood that Bemis would unilaterally increase prices to a significant number of customers. The acquisition also would have reduced the number of suppliers of flexible-packaging shrink bags for fresh meat from three to two, would have eliminated the competition between Bemis and Alcan with respect to that product, and would have facilitated coordination between Bemis and the remaining supplier of shrink bags for fresh meat. The Department therefore filed its Complaint alleging competitive harm in the development, production, and sale of the aforementioned product markets in the United States and Canada, and sought a remedy that would ensure that such harm is prevented. The proposed Final Judgment requires the divestiture of sufficient assets to prevent the increase in concentration that likely would have resulted from the acquisition of Alcan by Bemis.

II. Summary of Public Comments and the United States's Response

During the 60-day comment period, the United States received comments from three individuals: (1) A Concerned Menasha Citizen (unsigned); (2) Ms. Sheri Lemmers; and (3) Mr. Stuart Springstube. The comments, which are attached to this response, raise a single, overarching concern: That the former Alcan plant in Menasha, Wisconsin (the "Menasha facility") should not be "split" between Bemis and the acquirer of the divested business, as required by the proposed Final Judgment.

The proposed Final Judgment requires the divestiture of the Menasha facility in order to preserve competition in the markets for flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale. However, the Menasha facility contains a stand-alone wax-coating operation in addition to its production facilities for flexible-packaging for natural cheese. The terms of the proposed Final Judgment allow Bemis to move the waxcoating operation from Menasha to another of Bemis's plants and allow Bemis access to the Menasha facility for a limited period of time post-divestiture in order to effectuate that transfer.

The United States has reviewed the comments submitted and has determined that the proposed Final Judgment remains in the public interest.

A. Summary of Public Comments

The commenters argue that the wax-coating operations should not be removed from the Menasha facility because it will be detrimental both to that operation and to the operations that remain in the plant. *See* Concerned Comment at 2; Lemmers Comment at 1; Springstube Comment. In addition, the commenters claim that the presence of competing companies in the plant has, and will continue to cause, the following problems: (1) Former co-workers are now competitors and cannot communicate freely with each other, see Lemmers Comment at 1; Concerned Comment at I; Springstube Comment; and (2) managers for the competing entities are fighting over supplies and tools needed by each company to do its work.[1] Concerned Comment at I; Lemmers Comment at 1.

[1] One commenter is also concerned about the scheduling and leave policies that Bemis has instituted since taking over the Menasha plant. See Lemmers Comment at 1–2. These concerns are beyond the scope of the Department's investigation into the potential competitive harms associated with Bemis's purchase of Alcan.

B. The United States's Response

The concerns expressed in the comments do not provide a basis to alter the proposed Final Judgment. The Menasha plant is a key component of the proposed divestiture package. It represents a critical base of knowledge and expertise that is necessary for the acquirer of the divested business to compete successfully with Bemis in the markets for flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale. However, the wax-coating operation at the Menasha facility is unrelated to the production of flexible packaging for natural cheese.

The Department investigated whether removing the wax-coating operation from Menasha would adversely affect the viability of the plant. The Department reviewed blueprints of the Menasha facility, visited and toured the plant, interviewed plant management, reviewed Bemis's plans for phased removal of the wax-coating operation from Menasha, and reviewed the plant's operational and financial documents. After careful consideration of this information, the Department determined that, because the wax-coating operation is largely confined to a discrete area of the plant, it could be moved by Bemis to another facility with minimal disturbance to the overall operation of the plant. The Department also determined that the plant would remain a competitive and profitable business entity without the wax-coating operation. Finally, the Department determined that the acquirer of the divested business, as the sole owner of the Menasha facility and Bemis's landlord, would be well-positioned to manage Bemis's exit from the plant.[2]

This is not to imply, however, that Bemis will be able to remove the wax-coating operation from the Menasha facility without making any changes to the plant or its operations. Certain accommodations, as reflected in the language of the proposed Final Judgment, must be made in order to preserve future competition between Bemis and the acquirer of the divested business and limit the interaction of the two businesses while the wax-coating operation is being removed. For example, while the proposed Final Judgment allows Bemis to occupy the portions of the facility utilized for the wax-coating operation, it also requires that removal of that operation be completed within three years of the closing of the transaction.[3] The proposed Final Judgment also requires that, within three months of the closing of the transaction, Bemis create physical barriers in the Menasha facility to separate its business activities from those of the acquirer of the divested business while removal of the wax-coating operation is occurring.

It appears that Bemis's very compliance with the requirements of the proposed Final Judgment have given rise to the commenters' concerns about diminished working relationships within the Menasha plant. However, the Department continues to believe that compliance with those requirements is necessary to preserve current and future competition between Bemis and the acquirer of the divested business.

III. Standard of Judicial Review

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(l). In making that determination in accordance with the statute, the court is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N. V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the Final Judgment are clear and manageable").

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa,* Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3 Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, the

[2] One of the commenters also expressed a concern that Bemis would take over the wax-coating operation only to destroy it. *See* Concerned Comment at 1. This concern is not well founded. Bemis specifically asked to retain the wax-coating operation and is moving it at great expense. Thus, while the wax-coating operation no longer will exist at the Menasha plant, the Department has no reason to believe that Bemis will not continue to produce and sell wax-coated products at its own facilities.

[3] The three-year time frame was determined to be necessary in order to allow Bemis to continue to supply wax-coated products to customers during the transition.

[4] Cf. BNS, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). See generally Microsoft, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." SBC Commc'ns, 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest." *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001(1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, in its 2004 amendments to the Tunney Act,[5] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp.2d at 11.[6]

[5] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[6] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.")

IV. Conclusion

The issues raised in the public comments were among the many considered during the United States's extensive and thorough investigation. Pursuant to this investigation, the United States has determined that the Menasha facility will remain a competitive and profitable business entity competing in the development, production, and sale of flexible-packaging rollstock for chunk, sliced, and shredded natural cheese packaged for retail sale. The United States also has determined that the proposed Final Judgment as drafted provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comments and this response are published in the **Federal Register.**

Dated: June 7, 2010.

Respectfully submitted:

Rachel Adcox,

United States Department of Justice, Antitrust Division, Litigation II Section, 450 5th Street, N.W., Suite 8700, Washington, DC 20530, (202) 616–3302, *rachel.adcox@usdoj.gov*.

Certificate of Service

I, Rachel J. Adcox, hereby certify that on June 7, 2010, I caused a copy of the foregoing Response of Plaintiff United States to Public Comments on the Proposed Final Judgment to be served upon defendants Bemis Company, Inc., Rio Tinto plc, and Alcan Corporation by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

Counsel for Defendant Bemis Company, Inc.:

Stephen M. Axinn, Esq., John D. Harkrider, Esq., Axinn, Veltrop & Harkrider LLP, 114 West 47th Street, New York, NY 10036, (212) 728–2200, *sma@avhlaw.com, jdh@avhlaw.com.*

Counsel for Defendants Rio Tinto plc and Aican Corporation:

Steven L. Holley, Esq., Bradley P. Smith, Esq., Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, (212) 558–4737, *holleys@sullcrom.com, smithbr@sullcrom.com.*

I further certify that on June 7, 2010, I caused a copy of the foregoing to be delivered electronically and via U.S. mail, postage prepaid, to the following person:

Mr. Stuart Springstube, N6960 County Rd-A, Weyauwega, WI 54983, *Sspringstube@mwwb.net.*

Rachel J. Adcox, Esq.,

United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530, (202) 616–3302.

March 27, 2010

Maribeth Petrizzi,

Chief Litigation II Section.

Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530.

To: Maribeth Petrizzi

RE: Bemis/Alcan Acquisition

The proposal that the DOJ has allowed with the Bemis/Alcan acquisition is and will continue to be detrimental to the community of Menasha. It will also have an impact on the cheese industry. The turmoil that is running through the Menasha Plant is devastating the business. Bemis has walked in the doors and caused great chaos in the plant. The people chosen to go with Bemis are all unsure of their future and worry about what plans are for the future of the wax business. At the present time those employees feel Bemis will destroy the business in due time. Remedy Company is also unsure of their future. Bemis is doing everything in their power to take business that does not involve the cheese business and they are out to destroy what is left of Remedy Company. Remedy Company is taking a stance that everything in the mill is theirs and that they will need it to continue business. On the other hand Bemis is being left with nothing. Simply trying to start up offices has become mission impossible. They will not provide essential items such as office furniture and computers. The hourly machine workers in this plant have created relationships over long periods of time in this

facility and they are being asked not to talk to an old friend. Living in America gives us the right to freedom of speech, but Bemis and the DOJ is trying to take that away. Give the people of the plant some dignity and sympathy, you are destroying a successful plant that through the years has brought business into the community of Menasha, and to the local cheese manufactures of the surrounding area.

The City of Menasha spent millions of dollars five years ago to bring more and new equipment into the Menasha facility. The city funded part of the expense to reroute the city street to make Menasha Plant a growth of opportunity. The community of Menasha found this to be a great addition to their city. It brought jobs to the area, revenue to local businesses, and a sense of pride back to their community. Bemis and the DOJ has taken all of that away. It was not only in the best interest of the employees at Alcan but it was in the best interest of Menasha to keep this plant going.

I hope that the DOJ takes a closer look at the destruction that Bemis has caused. Look at what this will do to the surrounding area and how it will affect the City of Menasha. This acquisition did not have to take place as it did. Bemis could have chosen to leave Menasha Plant alone and let them strive to be a small but competitive business. Leave the employees in tack and let the business make or break on its own. Bemis has toured the plant and taken everything they desired from it, they have taken knowledgeable people and trades and will survive. Now it seems as though their final goal is too bury Remedy Company and soon after the wax business will come to an end.

Sincerely,

A Concerned Menasha Citizen

March 26, 2010

Maribeth Petrizzi
Chief Litigation II Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W.,
Suite 8700
Washington, D.C. 20530

Dear Maribeth Petrizzi,

I am writing in concern of the Bemis/Alcan acquisition, and currently work within the Menasha Plant where complete chaos takes place on a daily basis. It was the employees understanding that this transition is not to interrupt the work on either side of the sale. Unfortunately everyday is a battle zone, management is very cut throat on daily work supplies and tools that are needed by each side to conduct business as usual. There are supervisors and managers hoarding things just so others can not use them. There is bitterness throughout the plant and unrespectable and unprofessional talk among everyone. This plant has been very successful over the years and that is due to the loyalty and companionship that coworkers have with each other. Since Bemis has taken over this building it has mined long time friendships and reputations of mangers and supervisors that were once respected. We have a Plant Manager and an Operations Manager on opposite sides of the fence now and it leads to baffles on a daily basis.

Employees have lost a lot since this purchase was allowed, customers are disappointed that Bemis has the advantage, and the community of Menasha, Wisconsin is losing a great plant that brings money into their community.

I am disappointed in the decision that the Department of Justice came to. This plant should not be divided and can only survive as one. Relocating departments from this mill is detrimental to the success of the remaining Menasha Plant. Bemis seems to be doing everything in their power to make sure that Menasha no longer will exist. Back in November of 2009 Bemis came in and met with potential employees and said that we were very valuable employees to them, that they cared about us. I would like to know when the caring comes into play. They are currently forcing some of the people that they have chosen to stay with them to work 12 hours a day seven days a week. They also do not allow for personal days during this time nor will they excuse any doctor's appointments that you may have scheduled. Many of these employees do not have regular scheduled shifts and it is very difficult to schedule appointments, as you well know some doctors require you to schedule appointments anywhere from three to six months in advance. Bemis claims they care about your health and want you to be healthy but yet I can not be a half hour late for work or I will disciplined with an occasion. Five occasions are allowed within a year's timeframe and it takes you a year from the date of a call in to get that occasion back. Life today is busy and fast paced, people need to live life and enjoy it. Yet I can not understand how I am to enjoy my life working seven days a week twelve hours a day and expect to function normally. Granted this system is not suppose to remain for long, but who has given them a timeline for how long they can abuse employees. We are humans, not animals! It is offensive to work for such an employer that cares nothing about life and family.

I am in hopes that this hostile takeover ends in peace and that the DOJ reconsiders their proposal. This plant has always been a success story for the company and community and now it has turned into a bloody battle field. I believe that it is in the best interest of everyone including the DOJ to reconsider the ruling that was made. How would you like to walk into a war zone everyday wondering who is going to belittle you and who was going to be respectable to you? It's a question that employees should not even have to think about.

Sincerely,

Sheri Lemmers

March 27, 2010

Maribeth Petrizzi
U.S. Department of Justice,
450 Fifth Street, N.W., Suite 8700,
Washington, D.C. 20530.

Dear Friend,

This letter is in regards' to your decision in the Bemis acquisition of Alcan. I am a employee of the Alcan plant in Menasha and the decision to split our plant into two separate plants is a death sentence for many of us maybe all of us. Our plant was an example of how an America plant can be successful. Put now we are being forced to be split the plant and compete against our self. Bemis should have been allowed to have the whole plant or non of it. I am not great at writing letters if you would give me ten minutes of your time I could explain this better. PLEASE call me. I strongly encourage you to change your decision, I need this job not an unemployment check. Let Bemis have the Menasha plant.

Sincerely,

Stuart S. Springstube

[FR Doc. 2010–14121 Filed 6–11–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement of the Career Videos for America's Job Seekers Challenge; Correction

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice; correction.

SUMMARY: The Department of Labor published a document in the **Federal Register** of May 18, 2010, announcing the Career Videos for America's Job Seekers Challenge. The dates for all phases of this Video Challenge have been extended. This document contains corrections to the dates published on that date on page 27824, columns two and three.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 18, 2010, page 27824, column two under **SUPPLEMENTARY INFORMATION,** first paragraph, beginning with line 15, the corrected dates should read:

Phase 1 will run from May 10 to August 20, 2010. In this phase, the general public, associations, and/or employers can submit their occupational video for one of the 15 occupational categories to *http://www.dolvideochallenge.ideascale.com*. The submitted occupational videos should pertain to one of the following occupations:

1. Biofuels Processing Technicians;
2. Boilermakers;
3. Carpenters;
4. Computer Support Specialists;
5. Energy Auditors;
6. Heating, Air Conditioning, and Refrigeration Mechanics and Installers/Testing Adjusting and Balancing (TAB) Technicians;
7. Licensed Practical and Licensed Vocational Nurse;
8. Medical Assistants;
9. Medical and Clinical Lab Technicians including Cytotechnologists;

10. Medical Records and Health Information Technicians including Medical Billers and Coders;

11. Pipe fitters and Steamfitters;

12. Radiological Technologists and Technicians;

13. Solar Thermal Installers and Technicians;

14. Weatherization Installers and Technicians; and

15. Wind Turbine Service Technicians.

Those who submitted a video prior to the original deadline of June 18 and wish to submit an alternate version may do so by August 20, and indicate that they wish to substitute it for the original version.

Phase 2 will run from August 23 to September 10. During this phase, the DOL/ETA will screen, review, and identify the top three career videos in each occupational category and post these selected videos online at *http://www.dolvideochallenge.ideascale.com* for public review.

Phase 3 will run from September 13 to October 8. During this phase, the public will recommend the top career video in each occupational category. They will also have the opportunity to comment on videos.

Phase 4 will run from October 11 to October 29. In this final phase, DOL and ETA, will communicate the top career video in each occupational category to the workforce development community, educational community, and job seekers by:

1. Posting an announcement of the top ranking videos on key Web sites including:

- *DOL.gov;*
- *DOLETA.gov;*
- White House Office of Science and Technology Policy blog;
- *Workforce3One.org;* and Other sites;

2. Highlighting the videos and occupations on ETA's *http://www.CareerOneStop.org* portal, which already houses a variety of occupational videos for the workforce system;

3. Providing additional coverage of the videos on the ETA Communities of Practice, including: 21st Century Apprenticeship, Green Jobs, Reemployment Works, Regional Innovators, and Disability and Employment.

4. Utilizing other communication outlets such as national associations and intergovernmental organizations like the National Association of State Workforce Agencies, the National Association of Workforce Boards, the National Governor's Association, the National Association of Counties, and the Association of Community Colleges.

FOR FURTHER INFORMATION CONTACT: Michael Harding, Room 4510–C Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–2921 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *Harding.Michael@dol.gov*

Signed at Washington, DC this 8th day of June 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–14141 Filed 6–11–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11221]

ZRIN 1210–ZA09

Proposed Amendment to Prohibited Transaction Exemption (PTE) 96–23 for Plan Asset Transactions Determined by In-House Asset Managers

AGENCY: Employee Benefits Security Administration.

ACTION: Notice of Proposed Amendment to PTE 96–23.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 96–23. The exemption permits various transactions involving employee benefit plans whose assets are managed by in-house asset managers (INHAMs), provided the conditions of the exemption are met. The proposed amendment would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, INHAMs, and other persons engaging in the described transactions.

DATES: Written comments must be received by the Department on or before August 13, 2010.

ADDRESSES: All written comments and requests for a public hearing concerning the proposed amendment should be sent to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: PTE 96–23 Amendment. Interested persons are also invited to submit comments and hearing requests to EBSA via e-mail to: *moffitt.betty@dol.gov* or by fax to 202–219–0204 by the end of the scheduled comment period. The comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210. Comments and hearing requests will also be available online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa*, at no charge.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

FOR FURTHER INFORMATION CONTACT: Chris Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5700, 200 Constitution Avenue NW., Washington DC 20210, (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 96–23 (61 FR 15975, April 10, 1996). PTE 96–23 provides an exemption from certain of the restrictions of sections 406 and 407(a) of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing this amendment to PTE 96–23 on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. at 214 (2000 ed.), generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants; user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has designated this Notice as a significant action under Executive Order 12866 and has reviewed its contents.

Paperwork Reduction Act Analysis

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Department is soliciting comments concerning the proposed information collection request (ICR) included in the Proposed Amendment to Prohibited Transaction Exemption (PTE) 96–23 for Plan Asset Transactions Determined by In-House Asset Managers. A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov*. PRA Addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB are also available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

The Department has submitted a copy of the proposed amendment to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Comments also may be submitted by using the Federal eRulemaking portal at *http://www.regulations.gov* (follow instructions for submission of comments). OMB requests that comments be received within 30 days of publication of the proposed amendment to ensure their consideration. Please note that comments submitted to OMB are a matter of the public record.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number.[2] Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.[3]

The INHAM exemption permits various parties in interest to employee benefit plans to engage in transactions involving plan assets if, among other requirements, the assets are managed by an INHAM. The Department included in the exemption certain requirements intended to preserve plan assets and protect plan participant benefits. The exemption includes a requirement for written guidelines between an INHAM and a property manager that an INHAM has retained to act on its behalf. Because it is a customary business practice for agreements related to the investment of plan assets or transactions relating to the leasing of space to be described in writing, no burden was estimated for this provision. The information collection requirements included in this paperwork burden estimate consist of the requirements that the INHAM develop written policies and procedures designed to assure compliance with the conditions of the exemption, and have an independent auditor conduct an annual INHAM exemption audit and issue a written audit report.

The Department has made certain specific basic assumptions in order to establish a reasonable estimate of the paperwork burden of this information collection.

First, the Department assumes that INHAMs, which are large, sophisticated financial institutions, will use existing in-house resources to prepare the policies and procedures, rather than hiring outside service providers to do this work. This assumption does not apply to the audit requirements.

Second, given the nature of the information collection requirements, the Department assumes a combination of personnel will perform the information collection. Using data from the Bureau of Labor Statistics, the Department assumes an hourly wage rate of $107 for 2010, including both wages and benefits, for a financial manager and an hourly wage rate of $26, similarly including wages and benefits, for clerical personnel.[4] Legal professional time is similarly assumed to be $119 per hour.

Third, the Department assumes that maintenance of records of the policies and procedures and the audits is generally a usual and customary business practice that would be undertaken regardless of the exemption. The proposed amendment does not contain any additional recordkeeping requirements; no additional burden has been assumed for recordkeeping costs.

[2] 5 CFR 1320.5 and 1320.3(c).

[3] 5 CFR 1320.6.

[4] EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index (June 2009, Bureau of Labor Statistics). Figures are projected forward to 2010. Financial manager wage and benefits estimates of $107.23 are based on metropolitan wage estimates for financial managers. Clerical wage and benefits estimates of $26.14 are based on metropolitan wage rates for executive secretaries and administrative assistants. Legal professional wage and benefits estimates of $119.03 are based on metropolitan wage rates for lawyers.

Further, given the sophisticated nature of the parties involved, the Department assumes that communications between the parties will occur electronically via means already in existence. Therefore, the costs arising from electronic communications will be negligible.

The Department estimates that there will be approximately 20 INHAMs that will utilize the amended prohibited transaction exemption. Information provided by CIEBA, an industry trade group, indicates that approximately 24 of CIEBA's members manage plan assets in-house and approximately 14–16 of those currently maintain INHAMs and utilize the exemptive relief provided in PTE 96–23.[5] CIEBA's membership is estimated to include about 80 percent of all the large firms that manage plan assets in-house. That leads to an estimate of approximately 18 INHAMs. In addition, the Department expects approximately two more INHAMs to be established due to proposed changes to the definition of an INHAM. The number of INHAMs is assumed to be constant over time.

Written Policies and Procedures

The Department assumes that INHAMs will use existing in-house resources to prepare the written policies and procedures. The Department estimates that each INHAM will use 15 hours of a legal professional's time to develop policies and procedures. This leads to an hour burden in the first year of 300 hours.[6] At $119 per hour, the equivalent cost will be $35,700 for the first year.[7]

For subsequent years, the Department assumes that INHAMs will change their policies and procedures very infrequently. Therefore, the hour burden for subsequent years is estimated to be negligible. The Department invites comments from interested persons on the appropriateness of this assumption.

Audit Requirements

INHAMs are assumed to use either a law firm or an accounting firm to conduct the annual audit required by the proposed amendment. The Department has received information from industry representatives that the cost of the annual audit required by PTE 96–23 may range from approximately $10,000 to $25,000, depending on asset size and how many years the INHAM has used the auditing firm. The Department has used a conservative estimate for the cost of the outside auditing firm for each audit of $20,000. This leads to a cost estimate for the annual audits of $400,000.[8]

For purposes of the hour burden, the Department estimates that each INHAM will use in-house legal professional, financial manager, and clerical time to provide documents and respond to questions from the auditor. Each annual audit will require about ten hours of a legal professional's time, 25 hours of a financial manager's time, and twelve hours of clerical time. This leads to an hour burden of 940 hours.[9] The equivalent cost of this hour burden for the annual audits is approximately $83,700.[10]

Summary

For the first year, the Department estimates that the total hour burden imposed by the information collection is about 1,240 hours.[11] The total equivalent cost of this hour burden is approximately $119,400.[12] The total cost burden is $400,000.

For subsequent years, the total annual hour burden is approximately 940 hours. The total equivalent annual cost of this hour burden is about $83,700. The total annual outside cost is $400,000.

The paperwork burden estimates are summarized as follows:

Type of Collection: New collection (Request for new OMB Control Number).

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Proposed Amendment to PTE 96–23 for Plan Asset Transactions Determined by In-House Asset Managers.

OMB Control Number: New.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 20.

Estimated Number of Annual Responses: 40 in the first year, 20 in each subsequent year.

Frequency of Response: Annually; occasionally.

Estimated Total Annual Burden Hours: 1,240 in the first year, 940 in each subsequent year.

Estimated Total Annual Burden Cost: $400,000.

Background

On March 13, 1984, the Department granted Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (49 FR 9494), a class exemption that permits various parties who are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by a "qualified professional asset manager" (QPAM). The Department recently amended the QPAM exemption.[13]

The QPAM exemption granted in 1984 did not provide relief for transactions involving the assets of plans managed by in-house asset managers. The Committee on Investment of Employee Benefit Assets (CIEBA) subsequently requested such relief. CIEBA represented that in-house managers encountered technical problems under the prohibited transaction rules of ERISA in the course of considering arm's-length transactions that would be in the interests of their plans.

CIEBA stated, in its original exemption application, that in-house managers have become an established part of many large companies that manage some or all of their plan assets in-house. According to CIEBA, many of the large corporations that made up its membership maintained one or more employee benefit plans holding, in the aggregate, assets in excess of $250 million. These large corporations determined that they could reduce costs and maintain high quality management by developing an in-house asset management capability rather than relying exclusively on outside managers or consultants. CIEBA represented that, in addition to providing reduced costs

[5] CIEBA is a trade association whose membership includes corporate financial officers who serve as fiduciaries of employee benefit plans subject to ERISA and the Code. CIEBA's approximately 115 member companies collectively oversee about $1.4 trillion of defined benefit and defined contribution plan assets for about 16 million plan participants and beneficiaries. For defined benefit plans in 2008, the member companies oversaw more than $652 billion in plan assets for more than 10.2 million plan participants. CIEBA 2008 Membership Profile Executive Summary. This figure represents approximately 35 percent of the defined benefit plan assets in the United States. This calculation is based on a projection computed by applying percentage changes in pension assets derived from the Federal Reserve Board's Flow of Funds Accounts to the 2006 Form 5500 filings with the U.S. Department of Labor.

[6] 20 INHAMs x 15 hours = 300 hours.

[7] 300 hours x $119 per hour = $35,700.

[8] $20,000 × 20 INHAMs = $400,000.

[9] (10 hours + 25 hours + 12 hours) × 20 INHAMs = 940 hours.

[10] (10 hours × $119 per hour + 25 hours × $107 per hour + 12 hours × $26 per hour) × 20 INHAMs = $83,700.

[11] 300 hours + 940 hours = 1,240 hours.

[12] $35,700 + $83,700 = $119,400.

[13] *See* Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 70 FR 49305 (August 23, 2005). *See also* Proposed Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers, 70 FR 49312 (August 23, 2005).

for comparable or better quality management, in-house managers were attractive to employers because they devoted their time solely to the plan's asset management activities, while outside managers had other clients and responsibilities. The applicant also asserted that the named plan fiduciaries benefited from having access to in-house expertise and advice to assist them in carrying out their fiduciary responsibilities.

CIEBA represented that, unless the Department provided broad exemptive relief for in-house asset managers, in-house plans would be disadvantaged because of the restrictions on the types of transactions an in-house manager could engage in on behalf of such a plan. The applicant explained that very large plans may have thousands of parties in interest, making the task of determining whether a particular transaction was prohibited a considerable burden for the plan fiduciaries. According to the applicant, if the in-house manager wished to enter into a transaction he or she believed would be beneficial to the plan but which also involved a party in interest, that manager would be required to either: (1) Seek an individual prohibited transaction exemption; (2) retain a QPAM for the transaction; or (3) forgo the transaction. The applicant argued that seeking an individual exemption involved time and legal expenses. In addition, the use of a QPAM entailed additional expenses for the plan despite the fact that the in-house manager had already done most of the work required for the transaction, including performing the necessary due diligence as to, for example, the creditworthiness of the other parties to the transaction.[14] Finally, the applicant argued that forgoing the transaction might cause the plan to miss out on a beneficial opportunity. CIEBA argued that a class exemption for in-house asset managers was necessary because these limitations on a plan's investment choices could raise a plan's investment costs in the short run by limiting the parties with whom it may deal, and could adversely affect investment performance in the long run. Based on the record developed, the Department determined that relief would be appropriate and granted the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (INHAMs).[15]

[14] The Department is expressing no opinion as to whether the above described transaction would come within the scope of relief provided by PTE 84–14, as amended.

[15] 61 FR 15975 (April 10, 1996).

Description of Existing Relief

The INHAM exemption consists of four separate parts. Part I sets forth the general exemption and enumerates certain conditions applicable to the transactions described therein. The general exemption allows that portion of a plan which is managed by an INHAM to engage in all transactions described in section 406(a)(1)(A) through (D) of ERISA with virtually all party in interest service providers except the INHAM or a person related to the INHAM. The general exemption does not extend to transactions that would give rise to violations of section 406(b) of ERISA.

Part II of the exemption provides limited relief under both sections 406(a) and (b), and 407(a), of ERISA for certain transactions involving employers and their affiliates who cannot qualify for the general exemption provided by Part I. Section II(a) provides limited relief for the leasing of office or commercial space by a plan to an employer if the plan acquired the property subject to an outstanding lease with an employer or affiliate as a result of foreclosure on a mortgage or deed of trust. Section II(b) permits a plan to lease residential space to an employee of an employer any of whose employees are covered by such plan, or to any employee of a 50% or more parent or subsidiary of the employer.

Part III of the exemption provides relief from sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of ERISA for the furnishing of services, facilities and any goods incidental thereto by a place of accommodation owned by a plan managed by an INHAM to a party in interest with respect to the plan, if the services, facilities or incidental goods are furnished on a comparable basis to the general public.

Part IV contains definitions of certain terms used in the exemption.

Description of the Proposed Amendments

Definition of INHAM

The Department is proposing to amend several provisions of the INHAM exemption, including the definition of INHAM in section IV(a). Section IV(a) currently provides that:

> The term "in-house asset manager" or "INHAM" means an organization which is—
>
> (1) Either (A) a direct or indirect wholly-owned subsidiary of an employer, or a direct or indirect wholly-owned subsidiary of a parent organization of such employer, or (B) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization; and
>
> (2) an investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate legal entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer.
>
> In addition, plans maintained by affiliates of the INHAM and/or the INHAM, must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

The Department has been informed by interested persons that the requirement that an INHAM be a wholly owned subsidiary of an employer or its parent organization unduly limited some entities from serving as INHAMs. Interested parties requested, in comments submitted in connection with the proposed amendment to the QPAM class exemption [68 FR 52419, September 3, 2003], that the Department consider broadening the definition of INHAM to permit a greater number of entities to take advantage of the relief provided by the exemption.

In response to such comments, the Department proposes to expand the definition of INHAM to include a subsidiary that is 80% or more owned by the employer or parent company. Additionally, the plan assets under management requirement would be increased from $50 million to $85 million, effective as of the last day of the first fiscal year beginning on or after the date of publication in the **Federal Register** of the final amendment to this exemption. The increase reflects the change in the Consumer Price Index.

Requested Clarifications

The Department has also been asked informally to clarify several issues regarding the definition of an INHAM and the scope of the exemption. First, the Department has been asked whether an INHAM can act on behalf of its own plans. The exemption provides relief for transactions involving a "plan" as defined in section IV(h). As noted by the Department in the preamble to the original exemption, the definition of plan adopted by the Department includes a plan maintained by the INHAM or an affiliate of the INHAM. Accordingly, the exemption currently provides relief for an INHAM to act on behalf of its own plans.

Additionally, interested persons have asked the Department to clarify certain aspects of transactions involving both INHAMs and QPAMs. The Department

was asked whether a QPAM could be employed to negotiate the specific terms of a deal after an employer or its INHAM have agreed on general terms with the counterparty. The Department stated in the preamble to the original QPAM class exemption that, while a QPAM may adhere to investment guidelines established by persons with the power to appoint it, the retention of a veto or approval power by the plan sponsor or its designee would be inconsistent with the underlying concept of the QPAM exemption, that is, the transfer of plan assets to an independent, discretionary, manager.[16] In the Department's view, an INHAM directing a QPAM to negotiate specific terms of a deal that has already been generally agreed upon by the INHAM or the employer represents a more significant limitation on the QPAM's discretion than the imposition of investment guidelines. Similar to a veto or approval power, this amount of involvement would be inconsistent with the basic premise of the QPAM exemption.

Interested persons also asked the Department to clarify that a transaction that is entered into by an INHAM, but subsequently overseen by a QPAM, or vice versa, may satisfy the terms of the INHAM and the QPAM exemption, as applicable. The Department believes that, unlike the situation described in the previous paragraph, the INHAM and the QPAM may each operate independently of one another and have discretionary authority for different aspects of the same plan investment. Thus, for example, the INHAM may exercise its discretionary authority to purchase an office building on behalf of the plan. Pursuant to an investment management agreement with the plan, the QPAM may have independent discretionary authority to operate the building on a day to day basis, including negotiating all lease agreements. Under those circumstances, the Department agrees that the QPAM and the INHAM exemptions would be available for the transactions independently negotiated by the INHAM and QPAM, respectively, provided that the conditions of the relevant exemption are satisfied.

Interested persons also requested that the Department clarify section I(b) of PTE 96–23 in a manner similar to the clarification made by the Department in the proposed amendment to the QPAM class exemption.[17] Section I(b) of PTE 96–23 excludes from exemptive relief those transactions described in PTEs 81–6 (relating to securities lending arrangements), 83–1 (relating to acquisitions by plans of interests in mortgage pools) and 88–59 (relating to certain mortgage financing arrangements). The Department understands that there is uncertainty regarding the application of the INHAM class exemption to certain types of transactions that, although similar to the transactions that are the subject of the three specialized exemptions, are beyond the scope of relief provided by those exemptions. It is the view of the Department that the INHAM class exemption would provide relief for such transactions if the conditions of the exemption are otherwise satisfied. The Department cautions, however, that the INHAM class exemption would not be available for any transaction specifically described in PTEs 81–6, 83–1 or 88–59, if a person determines not to satisfy one or more of the conditions of the specialized exemptions solely in order to take advantage of the relief provided by the INHAM class exemption.

The Department notes that on October 31, 2006, it amended and replaced PTEs 81–6 and 82–63, relating to securities lending arrangements (PTE 2006–16, 71 FR 63786). That amendment extended the relief provided under PTEs 81–6 and 82–63 to additional parties and additional forms of collateral, subject to modified conditions. Recognizing that class exemptions are often amended over time to reflect changes in the marketplace, the Department intends that section I(b)(1) of the INHAM class exemption will continue to exclude from relief transactions described in PTE 2006–16 as it is amended or superseded. Accordingly, the Department proposes to amend the reference to PTE 2006–16 in section I(b), as well as the references in that section to the other class exemptions, to include the phrase "as amended or superseded."

Permitted Counterparties

The Department also received requests from interested persons to amend section I(e) of the exemption, which as currently drafted provides that the party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H), or (I) of ERISA; and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

On occasion, since the issuance of PTE 96–23, the Department has at times been asked to remove all limits on the types of parties in interest that could engage in transactions with the plan pursuant to the exemption. The Department also received a more limited request to permit the plan to engage in transactions with "co-joint venturers." Such entities own at least 10% of a joint venture in which an employer (or its parent) has at least a 50% interest and are parties in interest pursuant to section 3(14)(I) of ERISA. The interested person represented that it is administratively burdensome for INHAMs to monitor every joint venture in which employers may participate.

The Department has determined not to remove all restrictions on the types of parties in interest that may engage in transactions with plans pursuant to the exemption. In this regard, the Department notes that a commenter on the original INHAM exemption requested that the restrictions on parties in interest be removed, and at that time the Department stated that there had not been a sufficient showing that the safeguards contained in the proposed exemption would adequately discourage the exercise of undue influence upon the INHAM if the exemption were expanded in such manner. For that reason, the Department is not persuaded at this time that such an amendment is warranted.

However, the Department has determined to propose the more limited relief requested for entities that are parties in interest because they are "co-joint venturers." Section I(e) would provide as follows:

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) either (i) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA, or (ii) solely by reason of being a 10 percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer, or (iii) by reason of both (i) and (ii) only, and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

The Department cautions that, under section I(e), a co-joint venturer may engage in a transaction with a plan only if the joint venture relationship is the

[16] 49 FR 9497.

[17] *See* 68 FR 52422, September 3, 2003.

entity's sole relationship to the employer, or if the entity is both a joint venturer and a service provider or an entity with a relationship to a service provider as described above. If a person has any other relationship with the employer described in section 3(14) of the Act, the person would not fall within the scope of section I(e), and, therefore, could not take advantage of the relief provided by the exemption. In addition, the co-joint venturer may not be controlled by, controlling, or under common control with such employer. Finally, section I(e) clarifies that the co-joint venturer may not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and may not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Parties Related to the INHAM

The Department proposes to amend the definition of "related" to in section IV(d) of the exemption. Under section I(f), the party in interest dealing with the plan may not be the INHAM nor a person related to the INHAM. Section IV(d) currently provides that an INHAM is related to a party in interest.

> If the party in interest (or a person controlling, or controlled by, the party in interest) owns a five percent or more interest in the INHAM or if the INHAM (or a person controlling, or controlled by, the INHAM) owns a five percent or more interest in the party in interest.

The Department understands that compliance with the "related" to requirement may create administrative burdens for a number of INHAMs. In order to ease such burdens, the Department determined to increase the five percent threshold in section IV(d) to ten percent.

The Department notes that, under the proposed amendment, the requirements in section I(f) may overlap with the limitations contained in section I(e) under certain circumstances. Thus, for example, if the party in interest owns a 10 percent interest in the INHAM, the party in interest would fail section I(e) because, as a 10% shareholder of the INHAM, it would no longer be a party in interest solely by reason of being a service provider to the plan. In addition, it would fail section I(f) as it would be considered "related" to the INHAM because of its ownership interest. Conversely, under the proposed amendment, relief would be available to a service provider that is 9% owned by the parent corporation of the INHAM.

In addition, the Department is proposing to make several other amendments to section IV(d) to ease compliance burdens. As amended, that section would require ownership interests to be calculated only as of the last day of the entity's most recent calendar quarter. Finally, ownership interests held in a fiduciary capacity would not have to be considered in applying the percentage limitation in section IV(d) of the exemption.

Continuing Transactions

The Department has received several inquiries about section IV(e) of PTE 96–23, which defines "the time as of which any transaction occurs." The Department understands that there is uncertainty regarding the role of an INHAM in a continuing transaction. Section IV(e) states the following with respect to a continuing transaction:

> [I]n the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 10, 1996, or any renewal that requires the consent of the INHAM occurs on or after April 10, 1996, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

In the Department's view, the exemption would be available for a continuing transaction (*e.g.,* a loan or lease), provided that all the conditions of the exemption are satisfied on the date on which the transaction is entered into (or on the date of a renewal that requires the consent of the INHAM), notwithstanding the subsequent failure to satisfy one or more of the conditions of the exemption. Nonetheless, the Department cautions that, although Part I may continue to be available for the entire term of a continuing transaction which subsequently fails to satisfy one or more of the conditions of that Part, no relief would be provided for an act of self-dealing described in section 406(b)(1) of ERISA if the INHAM has an interest in the person which may affect the exercise of its best judgment as a fiduciary. Although Part I provides an exemption from section 406(a)(1)(A) through (D) of ERISA, it does not provide relief from acts described in section 406(b) of ERISA. The Department urges fiduciaries to take appropriate steps to avoid engaging in 406(b) violations should circumstances change during the course of a continuing transaction.

Exemption Audit

It has come to the Department's attention that practitioner uncertainty exists regarding certain aspects of the exemption audit, as required by section I(h), and defined in section IV(f), of PTE 96–23. The Department is therefore proposing to amend the class exemption, and is offering the following views, to provide clarity to those sections.

Section IV(f) of PTE 96–23 currently requires, in part, an auditor to test a representative sample of a plan's transactions covered by the exemption in order to make findings regarding whether the INHAM is in compliance with the INHAM's policies and procedures, and with the objective requirements of the exemption. The Department notes, however, that in certain instances, an auditor may need to construct and test more than one sample of transactions. For example, an auditor may initially believe that the most appropriate way to make the required findings is to construct a sample that represents a subset of the total universe of relevant transactions engaged in by the INHAM under the exemption. In testing the sample, however, the auditor should look for, and may find, patterns of compliance failures that indicate that certain types of transactions are more prone to compliance failures than others. If such patterns appear, the auditor may need to test additional transactions to more accurately assess the extent and causes of non-compliant transactions. Ultimately, an auditor must construct and test a sampling of transactions that is sufficient in size (*i.e.,* number of transactions) and nature (*i.e.,* type of transactions) to afford the auditor a reasonable basis to make its required determinations under the class exemption. Since, as noted in the preamble to PTE 96–23, the sole purpose of the audit is to assure compliance with the exemption, the sample should also be sufficient in size and nature for the auditor to render an overall opinion regarding whether the INHAM's program complied with the objective requirements of the exemption, and with the INHAM's own policies and procedures.

Accordingly, the Department is proposing to amend section IV(f)(2) of

the exemption in a manner that is consistent with the views expressed above.

Section I(h) of the exemption requires that an independent auditor conduct an exemption audit on an annual basis, and issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedures adopted by the INHAM. However, the exemption does not currently specify the date by which each audit must be completed. To avoid any uncertainty on this issue, the Department is proposing to amend section I(h) of the exemption to expressly provide that the audit must be completed within six months following the end of the year to which it relates. The Department is further proposing to amend section I(h) to clarify that the written report must contain both specific findings required under section IV(f)(2), and an overall opinion regarding the level of compliance of the INHAM's program with the objective requirements of the exemption.

The preamble to the original INHAM class exemption points out that relief is not available under the exemption for those transactions that did not satisfy its conditions. As a result, the Department anticipates that an auditor's report will clearly identify each transaction examined by the auditor that does not comply with the INHAM's policies and procedures or the exemption. In this regard, the report should identify the specific policies, procedures or exemption conditions that were not satisfied. The Department expects further that each written report will include a description of the steps, if any, taken by the INHAM to remedy transactions that did not comply with the objective requirements of the exemption. The report should also contain a description of the steps taken by the auditor to construct the sample(s) and an explanation as to why the auditor believes that the sample on which the required findings are based is an adequate representation of the total universe of transactions engaged in by the INHAM.

The INHAM retains responsibility for reviewing the written report and taking any appropriate actions deemed necessary for assuring compliance with the exemption. The Department cautions that the failure of the INHAM to take appropriate steps to address any adverse findings or prohibited transactions in an audit would raise issues under the fiduciary responsibility provisions of section 404 of ERISA.

Section II Transactions

Finally, the Department was asked by CIEBA, the original applicant, to amend section II(a) of the exemption, which provides relief for the leasing of office or commercial space owned by a plan managed by an INHAM to an employer with respect to the plan or an affiliate of such employer. As originally granted, the relief provided in section II(a) was limited to situations in which the plan acquired the space subject to an existing lease as a result of a foreclosure on a mortgage or deed of trust. CIEBA noted that situations other than a foreclosure can give rise to a lease relationship between a plan and an employer or its affiliate. For example, CIEBA noted that the plan may purchase a building subject to a pre-existing lease. Alternatively, the employer could acquire a company with an existing lease in a building owned by the plan. CIEBA asserted that in both situations, the terms of the existing lease were negotiated by a third party at arm's length. CIEBA additionally requested that section II(a) of the exemption be expanded to cover all situations in which the plan's lease to the employer or an affiliate arises as a result of a corporate transaction outside the INHAM's control.

The Department concurs with CIEBA that it is appropriate to expand the relief provided by section II(a) to include additional situations involving existing leases with an employer or an affiliate beyond foreclosure situations, provided that the decision to acquire the office or commercial space subject to the lease is made by the INHAM. The Department has proposed to amend section II(a) accordingly. In the case of a transaction involving the employer's acquisition of a company with an existing lease in a building purchased by the plan, the Department notes that the last sentence of section IV(e) provides that:

> [i]n determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

Accordingly, it is the view of the Department that section II(a) would be available for the entire lease term, notwithstanding the employer's subsequent acquisition of the lessee, provided that the conditions of the exemption were met at the time the transaction first was entered into. Finally, in light of the fact that the INHAM is affiliated with the employer maintaining the plan, the Department is not convinced that it is appropriate to provide broad relief for all situations in which the plan's lease to the employer or an affiliate arises as a result of a corporate transaction outside of the INHAM's control.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a public hearing should

state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 96–23, effective as of the date of publication of the final class exemption in the **Federal Register**, as set forth below:

Part I—Basic Exemption

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to a transaction between a party in interest with respect to a plan (as defined in section IV(h)) and such plan, provided that an in-house asset manager (INHAM) (as defined in section IV(a)) has discretionary authority or control with respect to the plan assets involved in the transaction and the following conditions are satisfied:

(a) The terms of the transaction are negotiated on behalf of the plan by, or under the authority and general direction of, the INHAM, and either the INHAM, or (so long as the INHAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the INHAM, makes the decision on behalf of the plan to enter into the transaction. Notwithstanding the foregoing, a transaction involving an amount of $5,000,000 or more, which has been negotiated on behalf of the plan by the INHAM will not fail to meet the requirements of this section I(a) solely because the plan sponsor or its designee retains the right to veto or approve such transaction;

(b) The transaction is not described in–

(1) Prohibited Transaction Exemption 2006–16 (71 FR 63786, October 31, 2006) (relating to securities lending arrangements) (as amended or superseded);

(2) Prohibited Transaction Exemption 83–1 (48 FR 895, January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools)(as amended or superseded); or

(3) Prohibited Transaction Exemption 88–59 (53 FR 24811, June 30, 1988) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the INHAM, the terms of the transaction are at least as favorable to the plan as the terms generally available in arm's length transactions between unrelated parties;

(e) The party in interest dealing with the plan: (1) Is a party in interest with respect to the plan (including a fiduciary) either (i) solely by reason of providing services to the plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of ERISA, or (ii) solely by reason of being a 10 percent or more shareholder, partner or joint venturer, in a person, which is 50 percent or more owned by an employer of employees covered by the plan (directly or indirectly in capital or profits), or the parent company of such an employer, provided that such person is not controlled by, controlling, or under common control with such employer, or (iii) by reason of both (i) and (ii) only, and (2) does not have discretionary authority or control with respect to the investment of the plan assets involved in the transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

(f) The party in interest dealing with the plan is neither the INHAM nor a person related to the INHAM (within the meaning of section IV(d));

(g) The INHAM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption; and

(h) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section IV(f)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance: (1) With the policies and procedures adopted by the INHAM in accordance with section I(g); and (2) with the objective requirements of the exemption. The written report shall also contain the auditor's overall opinion regarding whether the INHAM's program complied: (1) With the policies and procedures adopted by the IHNAM; and (2) with the objective requirements of the exemption. The exemption audit and the written report must be completed within six months following the end of the year to which the audit relates.

Part II—Specific Exemptions

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The leasing of office or commercial space owned by a plan managed by an INHAM to an employer any of whose employees are covered by the plan or an affiliate of such employer (as defined in section 407(d)(7) of the Act), if —

(1) The plan acquires the office or commercial space subject to an existing lease with the employer or its affiliate;

(2) The lease was negotiated by a party unrelated to the employer or its affiliate;

(3) The INHAM makes the decision on behalf of the plan to acquire the office or commercial space as part of the exercise of its discretionary authority;

(4) The exemption provided for transactions engaged in with a plan pursuant to section II(a) is effective until the later of the expiration of the lease term or any renewal thereof which does not require the consent of the plan lessor;

(5) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building or the commercial center; and

(6) The requirements of sections I(c), I(g) and I(h) are satisfied with respect to the transaction.

(b) The leasing of residential space by a plan to a party in interest if —

(1) The party in interest leasing space from the plan is an employee of an employer any of whose employees are covered by the plan or an employee of an affiliate of such employer (as defined in section 407(d)(7) of the Act);

(2) The employee who is leasing space does not have any discretionary authority or control with respect to the investment of the assets involved in the lease transaction and does not render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(3) The employee who is leasing space is not an officer, director, or a 10% or more shareholder of the employer or an affiliate of such employer;

(4) At the time the transaction is entered into, and at the time of any subsequent renewal or modification

thereof that requires the consent of the INHAM, the terms of the transaction are not less favorable to the plan than the terms afforded by the plan to other, unrelated lessees in comparable arm's length transactions;

(5) The amount of space covered by the lease does not exceed five percent (5%) of the rentable space of the apartment building or multi-unit residential subdivision [townhouses or garden apartments], and the aggregate amount of space leased to all employees of the employer or an affiliate of such employer does not exceed ten percent (10%) of such rentable space; and

(6) The requirements of sections I(a), I(c), I(d), I(g) and I(h) are satisfied with respect to the transaction.

Part III—Places of Public Accommodation

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4957(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by a plan and managed by an INHAM to a party in interest with respect to the plan, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part IV—Definitions

For purposes of this exemption:

(a) The term "in-house asset manager" or "INHAM" means an organization which is—

(1) either (A) a direct or indirect 80 percent or more owned subsidiary of an employer, or a direct or indirect 80 percent more owned subsidiary of a parent organization of such an employer, or (B) a membership nonprofit corporation a majority of whose members are officers or directors of such an employer or parent organization; and

(2) an investment adviser registered under the Investment Advisers Act of 1940 that, as of the last day of its most recent fiscal year, has under its management and control total assets attributable to plans maintained by affiliates of the INHAM (as defined in section IV(b)) in excess of $50 million; provided that if it has no prior fiscal year as a separate entity as a result of it constituting a division or group within the employer's organizational structure, then this requirement will be deemed met as of the date during its initial fiscal year as a separate legal entity that responsibility for the management of such assets in excess of $50 million was transferred to it from the employer. Effective as of the last day of the first fiscal year of the investment adviser beginning on or after the date of publication of this amendment to PTE 96–23 in the **Federal Register**, substitute "$85 million" for "$50 million" in (a)(2) of section IV above.

In addition, plans maintained by affiliates of the INHAM and/or the INHAM must have, as of the last day of each plan's reporting year, aggregate assets of at least $250 million.

(b) For purposes of sections IV(a) and IV(h), an "affiliate" of an INHAM means a member of either (1) a controlled group of corporations (as defined in section 414(b) of the Code) of which the INHAM is a member, or (2) a group of trades or businesses under common control (as defined in section 414(c) of the Code) of which the INHAM is a member; provided that "50 percent" shall be substituted for "80 percent" wherever "80 percent" appears in section 414(b) or 414(c) or the rules thereunder.

(c) The term "party in interest" means a person described in the Act section 3(14) and includes a "disqualified person" as defined in Code section 4975(e)(2).

(d) An INHAM is "related" to a party in interest for purposes of section I(f) of this exemption if, as of the last day of its most recent calendar quarter: (i) the INHAM (or a person controlling, or controlled by, the INHAM) owns a ten percent or more interest in the party in interest; or (ii) the party in interest (or a person controlling, or controlled by, the party in interest) owns a ten percent or more interest in the INHAM. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest; and

(3) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) For purposes of this exemption, the time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after April 10, 1996, or any renewal that requires the consent of the INHAM occurs on or after April 10, 1996, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied with respect to the transaction. Nothing in this paragraph shall be construed as exempting a transaction entered into by a plan which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption. In determining compliance with the conditions of the exemption at the time that the transaction was entered into for purposes of the preceding sentence, section I(e) will be deemed satisfied if the transaction was entered into between a plan and a person who was not then a party in interest.

(f) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the INHAM pursuant to section I(g) for consistency with each of the objective requirements of this exemption (as described in section IV(g)).

(2) A test of a sample of the INHAM's transactions during the audit period that is sufficient in size and nature to afford the auditor a reasonable basis: (A) To make specific findings regarding whether the INHAM is in compliance with (i) the written policies and procedures adopted by the INHAM pursuant to section I(g) of the exemption and (ii) the objective requirements of the exemption; and (B) to render an overall opinion regarding the level of compliance of the INHAM's program with section IV(f)(2)(A)(i) and (ii) of the exemption.

(3) A determination as to whether the INHAM satisfied the definition of an INHAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the

auditor during the course of its review and the auditor's findings.

(g) For purposes of section IV(f), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the INHAM to assure compliance with each of these requirements:

(1) The definition of an INHAM in section IV(a).

(2) The requirements of Part I and section I(a) regarding the discretionary authority or control of the INHAM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction, and with regard to the decision on behalf of the plan to enter into the transaction.

(3) That any procedure for approval or veto of the transaction meets the requirements of section I(a).

(4) For a transaction described in Part I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(e)(1), section I(e)(2), to the extent such person has discretionary authority or control over the plan assets involved in the transaction, or section I(f), and

(B) that the transaction is not described in any of the class exemptions listed in section I(b).

(5) For a transaction described in Part II:

(A) If the transaction is described in section II(a),

(i) that the transaction is with a party described in section II(a);

(ii) that the transaction occurs under the circumstances described in section II(a)(1), (2) and (3);

(iii) that the transaction does not extend beyond the period of time described in section II(a)(4); and

(iv) that the percentage test in section II(a)(5) has been satisfied or

(B) If the transaction is described in section II(b),

(i) that the transaction is with a party described in section II(b)(1);

(ii) that the transaction is not entered into with any person excluded from relief under section II(b)(2) to the extent such person has discretionary authority or control over the plan assets involved in the lease transaction or section II(b)(3); and

(iii) that the percentage test in section II(b)(5) has been satisfied.

(h) The term "plan" means a plan maintained by the INHAM or an affiliate of the INHAM.

Signed at Washington, DC this 9th day of June 2010.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–14205 Filed 6–11–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, June 17, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Final Rule—Part 701 of NCUA's Rules and Regulations, Interpretive Ruling and Policy Statement (IRPS) 10–1, NCUA's Chartering and Field of Membership Policies.

2. Delegations of Authority—Chartering.

3. Proposed Rule—Part 741 of NCUA's Rules and Regulations, Requirements for Insurance, Interest Rate Risk Policy and Program.

4. Insurance Fund Report.

5. Temporary Corporate Credit Union Stabilization Fund Accounting Standard.

6. Temporary Corporate Credit Union Stabilization Fund Payment of Insured Shares.

7. Temporary Corporate Credit Union Stabilization Fund Assessment.

RECESS: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Thursday, June 17, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities (2). Closed pursuant to some or all of the following exemptions: (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–14402 Filed 6–10–10; 4:15 pm]

BILLING CODE P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 13, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Musicology in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

2. *Date:* July 13, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Colleges and Universities I, submitted to the Office of

Challenge Grants at the May 5, 2010 deadline.

3. *Date:* July 14, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Comparative Literature and Literary Theory in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

4. *Date:* July 15, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Early Modern European History in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

5. *Date:* July 15, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Modern European History I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

6. *Date:* July 15, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Art and Anthropology, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

7. *Date:* July 19, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Religious Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

8. *Date:* July 19, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for African Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

9. *Date:* July 20, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Colleges and Universities II, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

10. *Date:* July 20, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Studies I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

11. *Date:* July 26, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for East Asian Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

12. *Date:* July 26, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Anthropology in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

13. *Date:* July 27, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for British Literature I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

14. *Date:* July 27, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for British Literature II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

15. *Date:* July 27, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for History I, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

16. *Date:* July 28, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Latin American Studies I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

17. *Date:* July 28, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Latin American Studies II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

18. *Date:* July 29, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

19. *Date:* July 29, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Philosophy II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

20. *Date:* July 29, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Research, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

21. *Date:* July 30, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Music and Dance in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. 2010–14137 Filed 6–11–10; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).
Dates/Time: June 29, 2010, 8:30 p.m.–5:30 p.m. June 30, 2010, 8:30 p.m.–2 p.m.
Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your access into the building, please contact the individual listed below prior to the meeting so that a visitors badge may be prepared for you in advance.

Type of Meeting: Open.
Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Executive Liaison, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Telephone Numbers: (703) 292–4216, 703–292–8040. *mtolbert@nsf.gov.*
Minutes: Minutes may be obtained from the Executive Liaison at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*
Purpose of Meeting: To study NSF programs and policies and provide advice and recommendations to NSF concerning broadening participation in science and engineering.

Agenda

Monday, June 29, 2010

Opening Statements by the Outgoing and Incoming CEOSE Chairs.
Presentations and Discussions:
✓ Broadening Participation in the America COMPETES Act.
✓ The NSF Strategic Plan with a Focus on the Inclusiveness Sections.
✓ CEOSE Membership.
✓ Suggestions Resulting from the Mini-Symposium.
✓ The Proposed Path Forward for the EHR Comprehensive Program.

Tuesday, June 30, 2010

Opening Statement by CEOSE Chair.
Presentations and Discussions:
✓ Broadening Participation Initiatives in the NSF Mathematical and Physical Sciences Directorate of NSF.
✓ Reports by CEOSE Liaisons to NSF Advisory Committees.
✓ A Conversation with the Acting Director of NSF.
✓ General Discussion Pertinent to the CEOSE Mandate.

Dated: June 9, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–14163 Filed 6–11–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–042; NRC–2010–0165]

Exelon Nuclear Texas Holdings, LLC (Exelon) Acceptance for Docketing of an Application for an Early Site Permit for the Victoria County Station Site

On March 25, 2010, the Nuclear Regulatory Commission (NRC, the Commission) received an application from Exelon Nuclear Texas Holdings LLC (Exelon), dated March 25, 2010, filed pursuant to Section 103 of the Atomic Energy Act and 10 CFR Part 52, for an early site permit (ESP) for a location approximately 13.3 miles south of the city of Victoria, Texas, identified as the Victoria County Station ESP site. A notice of receipt and availability of this application was previously published in the **Federal Register** (75 FR 22434: April 28, 2010). The applicant supplemented the application by letters dated May 4, May 6, May 13, and May 20, 2010.

An applicant may seek an ESP in accordance with Subpart A of 10 CFR Part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the duration of an ESP (up to 20 years), the permit holder may reference the permit in a CP or COL application.

The NRC staff has determined that Exelon has submitted information in accordance with 10 CFR Parts 2 and 52 that is sufficiently complete and acceptable for docketing. The Docket Number established for this application is 52–042. The NRC staff will perform a detailed technical review of the application, and docketing of the ESP application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with 10 CFR 52.21 and will receive a report on the application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.23. If the Commission then finds that the application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue an ESP, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR Part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce, in a future **Federal Register** notice, the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.21.

A copy of the Exelon ESP application is available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and at the Victoria County Library in Victoria, Texas. It is also accessible electronically from the Agency wide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML101110201).

Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 7th day of June 2010.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–14208 Filed 6–11–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213; NRC–2010–0201]

Connecticut Yankee Atomic Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards; Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would change the title of the Physical Security Plan in the Haddam Neck Facility Operating License from the "Haddam Neck Plant Defueled Physical Security Plan" to the "Haddam Neck Plant ISFSI Physical Security Plan."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment is a title change only. Therefore, the proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is a title change only. Therefore, the proposed amendment does not involve a new or different kind of accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment is a title change only. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in

accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated April 7, 2010, (ADAMS Accession No. ML101100480) which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Joseph Fay, Connecticut Yankee Atomic Power Company, 362 Injun Hollow Road, East Hampton, Connecticut 06424–3099.

Dated at Rockville, Maryland, this 1st day of June 2010.

For the Nuclear Regulatory Commission.

John Goshen,

Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–14199 Filed 6–11–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2010–0200]

Exelon Generation Company, LLC Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions from Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Appendix R, Section III.G, "Fire Protection of Safe Shutdown Capability," for Renewed Facility Operating License No. DPR–16, for the use of operator manual actions in lieu of the requirements specified in Section III.G.2, as requested by Exelon Generation Company, LLC (the licensee), for operation of the Oyster Creek Nuclear Generating Station (Oyster Creek), located in Ocean County, New Jersey. Therefore, as required by 10 CFR Section 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions to 10 CFR Part 50, Appendix R, Section III.G.2 based on 6 operator manual actions contained in the licensee's Fire Protection Program (FPP). The licensee's FPP requires that the identified operator manual actions be performed outside of the control room to achieve shutdown following fires in certain fire areas. The licensee states that each of the manual actions was subjected to a manual action feasibility review for Oyster Creek that determined that the manual actions are feasible and can be reliably performed.

The proposed action is in accordance with the licensee's application dated March 4, 2009 (available in the Agencywide Documents Access and Management System (ADAMS) Accession No. ML090640225). By letter dated April 2, 2010 (ADAMS Accession No. ML100920370), the licensee submitted a response to an NRC staff request for additional information. In this letter the licensee identified that, as a result of clarifications included to Regulatory Guide 1.189, "Fire Protection for Nuclear Power Plants," some of the operator manual actions included in the original exemption request no longer required an exemption.

The Need for the Proposed Action

The proposed exemption from 10 CFR Part 50, Appendix R, was submitted in response to the need for an exemption as identified by NRC Regulatory Information Summary (RIS) 2006–10, "Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions." The RIS noted that NRC inspections identified that some licensees had relied upon operator manual actions, instead of the options specified in Paragraph III.G.2 of 10 CFR Part 50, Appendix R, as a permanent solution to resolve issues related to Thermo-Lag 330–1 fire barriers. RIS 2006–10, however, identifies that an exemption under 10 CFR Section 50.12 is necessary for use of the manual actions in lieu of the requirements of 10 CFR Part 50, Appendix R, III.G.2, even if the NRC previously issued a Safety Evaluation that found the manual actions acceptable. RIS 2006–10 and Enforcement Guidance Memorandum 07–004 (ADAMS Accession No. ML071830345) provided that exemption requests must be submitted by March 6, 2009. The licensee's proposed exemption provides the formal vehicle for NRC approval for the use of the specified operator manual actions instead of the options specified in 10 CFR Part 50, Appendix R, III.G.2.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the operator manual actions are procedural direction to take actions proscribed for response to a fire-related event at the plant and, therefore, cannot increase the probability of an event occurring or introduce a new or different kind of event. The operator manual actions restore or allow function of mitigative systems necessary to place the plant in a safe-shutdown condition. Therefore, the proposed action would not significantly increase the consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. None of the manual actions to be performed are in areas that have radiation levels that would preclude entry. Further, the licensee stated that the highest expected dose during performance of the manual actions is 100 millirem (2 percent of the annual occupational limit), and the majority of manual actions are not in radiological controlled areas. Based on this consideration, the NRC staff finds that there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological impacts associated with the proposed action. The NRC staff thus concludes that granting the proposed exemption would result in no significant radiological environmental impact.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity or the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed action. Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the 1974 Final Environmental Statement for Oyster Creek and NUREG–1437, Vol. 1, Supplement 28, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Oyster Creek Nuclear Generating Station, Final Report—Main Report."

Agencies and Persons Consulted

In accordance with its stated policy, on June 7, 2010, the NRC staff consulted with the New Jersey State official for the

Department of Environmental Protection regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 4, 2009 (ADAMS Accession No. ML090640225), as supplemented on April 2, 2010 (ADAMS Accession No. ML100920370). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of June 2010.

For the Nuclear Regulatory Commission.

G. Edward Miller,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 2010–14200 Filed 6–11–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Application for 10-Point Veteran Preference, 3206–0001

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension of an already existing information collection request (ICR) 3206–0001, Application for 10-Point Veteran Preference.

DATES: Comments are encouraged and will be accepted until August 13, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Employee Services, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Gale Perryman or via electronic mail to *gale.perryman@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Hiring Policy, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Gale Perryman or via electronic mail to *gale.perryman@opm.gov.*

SUPPLEMENTARY INFORMATION: The Standard Form (SF) 15, Application for 10-Point Veteran Preference, is used by OPM examining offices and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944.

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Employee Services, Office of Personnel Management.

Title: Application for 10-Point Veteran Preference.

OMB Number: 3206–0001.

Affected Public: Federal Employees, Retirees, Individuals and Households.

Number of Respondents: 18,418.

Estimated Time per Respondent: 10 minutes/hour.

Total Burden Hours: 3,070 hours.

U.S. Office of Personnel Management,

John Berry,

Director.

[FR Doc. 2010–14164 Filed 6–11–10; 8:45 am]

BILLING CODE 6325–38–P

SMALL BUSINESS ADMINISTRATION

DEPARTMENT OF COMMERCE

OFFICE OF MANAGEMENT AND BUDGET

Notification of a Public Meeting and Mailbox on the Presidential Memorandum on Federal Small Business Contracting

AGENCY: Small Business Administration, Department of Commerce, Office of Management and Budget.

ACTION: Notice of a public meeting and request for comments.

SUMMARY: On April 26, 2010, President Obama established an Interagency Task Force to develop proposals and recommendations for enhancing the use of small businesses in Federal contracting, including businesses owned by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces. The Memorandum establishing the Task Force is available at: *http://www.whitehouse.gov/the-press-office/presidential-memorandum-interagency-task-force-federal-contracting-opportunities-sm.*

In furtherance of the President's Memorandum, the Small Business Administration (SBA), the Department of Commerce (DOC), and the Office of Management and Budget (OMB), who serve as co-chairs of the Task Force, invite interested parties from both the public and private sectors to offer their views on the challenges small businesses face in pursuing federal contracts, on best practices for overcoming these challenges and increasing small business participation in the Federal marketplace. Comments are especially encouraged on: (1) Removing barriers to small business participation; (2) using innovative strategies and technologies to increase opportunities for small business contractors; and (3) identifying successful agency and private sector outreach practices for matching small businesses with contracting and subcontracting opportunities.

Interested parties may offer oral comments at a public meeting to be held on June 28, 2010. Parties are also encouraged to provide written comments directly to *SB_TaskForce_Comment@sba.gov* by June 30. Please put "Comment" in the subject line of the e-mail.

Public Meeting

Dates and Address: A public meeting will be conducted on June 28, 2010 at 1 p.m. e.t. and ending no later than 4 p.m. e.t. The meeting will be held in the auditorium of the Department of Commerce. The auditorium is located off the main lobby of the Department of Commerce building at 1401 Constitution Avenue, NW., Washington, DC 20230.

Procedures for the public meeting: The public is asked to pre-register by 5 p.m. e.t. on June 21, 2010, due to security and seating limitations. Registration is on a first-come first-served basis and space is limited. To pre-register, please send an e-mail to *SB_TaskForce_Comment@sba.gov* with your name, organization or small business that you represent, along with contact information and the topics that you are interested in (*see* topics below). Please put "Registration" in the subject line of the e-mail. Registration on June 28, 2010 at the meeting location will begin at 12 p.m. e.t. on June 28, 2010 and the meeting will start at 1 p.m. e.t.

Public Comments: The purpose of the meeting is to encourage public comment on the issues highlighted in the President's Memorandum and related matters of interest to the small business community. A list of topics and questions are provided at the end of this notice. Parties wishing to make oral or written comment are especially encouraged to provide comment on these issues for the Task Force's consideration.

Agenda: An agenda will be posted at *http://www.sba.gov/aboutsba/sbaprograms/gc/index.html* by no later than June 16, 2010 with additional details on the structure of the meeting. The meeting may include plenary sessions and/or break-out sessions that focus on individual topics, such as those described at the end of this notice. Therefore, parties may be asked to focus their oral comments on the topic of greatest interest to them.

Written Comments to Small Business Task Force Mailbox: In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to *SB_TaskForce_Comment@sba.gov* by June 30, 2010. Please put "comment" in the subject line. Because the Task Force must prepare recommendations before the end of August, interested parties wishing to have their comments considered in connection with this process must submit their comments by 5 p.m. e.t. on June 30, 2010. Comments received after this date, but before the Task Force completes its work, will be considered in follow-up implementation efforts, as appropriate.

Meeting Accommodations: The public meeting will be physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to *SB_TaskForce_Comment@sba.gov* by June 21, 2010. Please put "Accommodations" in the subject line.

FOR FURTHER INFORMATION CONTACT: For clarification of the subject matter related to the memorandum: e-mail *SB_TaskForce_Comment@sba.gov.* Please put "Question" in the subject line.

SUPPLEMENTARY INFORMATION: The President's April 26, 2010 Memorandum emphasizes the Administration's commitment to tapping the talents and skills of small businesses, the engine of our Nation's economy, and ensuring that they have a fair chance to participate in Federal contracting opportunities. The Memorandum establishes an interagency Small Business Task Force to identify best demonstrated practices for removing barriers to such participation and taking greater and better advantage of the creativity, innovation, and technical expertise of the small business community, including firms owned and controlled by women, minorities, socially and economically disadvantaged individuals, service-disabled veterans of our Armed Forces, and firms located in Historically Underutilized Business Zones. Section 3 of the Memorandum charges the Task Force with developing proposals and recommendations for, in primary part:

(i) Using innovative strategies, such as teaming, to increase opportunities for small business contractors and utilizing and expanding mentorship programs, such as the 8(a) mentor-protégé program;

(ii) removing barriers to participation by small businesses in the Federal marketplace by unbundling large projects, improving training of Federal acquisition officials with respect to strategies for increasing small business contracting opportunities, and utilizing new technologies to enhance the effectiveness and efficiency of Federal program managers, acquisition officials, and the Directors of Offices of Small Business Programs and Offices of Small and Disadvantaged Business Utilization or equivalent, their managers, and procurement center representatives in identifying and providing access to these opportunities; and

(iii) expanding outreach strategies to match small businesses, including firms owned and controlled by women, minorities, socially and economically disadvantaged individuals, and service-disabled veterans of our Armed Forces, and firms located in Historically Underutilized Business Zones with contracting and subcontracting opportunities.

The Task Force welcomes public comments on challenges and opportunities related to small business contracting and seeks public input, in particular, on the issues and questions described below:

Teaming, mentor-protégé programs, and subcontracting. What steps can be taken to increase interest in and participation through use of: (a) Teaming arrangements (*e.g.,* additional guidelines for structuring teams and planning acquisitions to encourage their use, clarification of affiliation rules) and (b) mentor-protégé programs (e.g., government-wide guidelines). How can subcontracting practices, such as tracking and evaluation of subcontracting plans, be improved? How can prime contractors be more effectively held responsible for their subcontracting plans?

Set-asides and bundling. What aspects, if any, of the rules governing set-asides should be changed? What further guidance might be helpful? What strategies best mitigate the effects of contract bundling? Are there specific examples that might be shared as success stories or models for agencies to follow in mitigating contract bundling?

Training, outreach, and technology. What types of training would improve small businesses' ability to participate in the Federal marketplace and what are the best ways to deliver this training to the small business community? What Federal organizations do the best job in their small business outreach strategies? What specific practices do they employ that are most helpful? What technology systems and applications are most helpful to small businesses in finding contracting opportunities? What improvements can be made to existing technologies and what new applications might be considered to make doing business with the Federal government easier and more attractive?

Workforce training: What is the best way to train individuals in the procurement process? How can we

ensure they have the skills needed to serve small businesses?

Joseph Jordan,

Associate Administrator, Small Business Administration.

[FR Doc. 2010–14144 Filed 6–11–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 17, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 17, 2010 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; adjudicatory matters; consideration of amicus participation; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–14354 Filed 6–10–10; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

ITS Joint Program Office; IntelliDrive[SM] Safety Workshop; Notice of Workshop

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The ITS Joint Program Office will hold a three-day workshop to present and discuss IntelliDrive[SM] safety technical and policy research roadmaps. The workshop will be held on July 20–22, 2010, at the Hilton Chicago Northbrook, 2855 North Milwaukee Avenue, Northbrook, Illinois 60062.

The first day of the workshop will provide a detailed discussion of the technical research activities within the major IntelliDrive safety program initiatives. Days two and three will focus on the policy issues as well as policy vs. technical trade-offs with a focus on the Vehicle to Vehicle (V2V) environment. This workshop is for all parties interested in IntelliDrive safety-related activities. There will be a free webinar available for the July 20 presentations only.

Following is the preliminary workshop agenda: Day one; IntelliDrive Safety Program Roadmaps and discussion (V2V, Safety Pilot, DSRC Device Certification, Vehicle to Infrastructure Safety, and Human Factors for IntelliDrive). Day two; IntelliDrive Policy Roadmaps with a focus on reaching the V2V 2013 regulatory decision milestone. Day three; Continuation of policy discussion and break-out sessions on key V2V policy tropics.

Additional information, including registration details may be found at the ITS JPO Web site: *http://www.its.dot.gov/press/2010/intellidrive_safety_workshop.htm.*

Issued in Washington, DC, on the 8th day of June 2010.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2010–14162 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0061]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 13, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2010–0061 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jesús M. Rohena, P.E., Office of Bridge Technology, HIBT–10, (202) 366–4593, or Mr. Robert Black, Office of Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Tunnel Inventory (NTI).

Background: After investigating the fatal July 2006 suspended ceiling collapse in the Central Artery Tunnel in Boston, Massachusetts, the National Transportation Safety Board (NTSB) stated in its report that, "had the Massachusetts Turnpike Authority, at regular intervals between November 2003 and July 2006, inspected the area above the suspended ceilings in the D Street portal tunnels, the anchor creep that led to this accident would likely have been detected, and action could have been taken that would have prevented this accident." Among its recommendations, the NTSB suggested that the FHWA seek legislative authority

to establish a mandatory tunnel inspection program similar to the National Bridge Inspections Standards (NBIS) that would identify critical inspection elements and specify an appropriate inspection frequency. Additionally, the DOT Inspector General (IG), in testimony before Congress in October 2007, highlighted the need for a tunnel inspection and reporting system to ensure the safety of the Nation's tunnels, stating that the FHWA "should develop and implement a system to ensure that States inspect and report on tunnel conditions." Additionally, the IG stated that "FHWA should move aggressively on this rulemaking and establish rigorous inspection standards as soon as possible."

In order to be responsive to recommendations from the NTSB and OIG, and to ensure public safety in Federal-aid highway tunnels, the FHWA feels that a regulation establishing uniform national tunnel inventory is necessary. Lack of mandatory standards also introduces the likelihood of non-uniformity in practices across the nation. As evidenced by recent scrutiny of the bridge inspection program by Congress, the public, media, and others, there is a strong desire to have some degree of national uniformity and consistency to ensure public trust and confidence in our highway system.

States should collect and report to FHWA the condition of their Federal-aid highway tunnels inventory. This will allow FHWA to be informed on the condition of tunnels in the nation and respond to Congress requests for this type of data.

The FHWA issued an Advance Notice of Proposed Rule Making (ANPRM) on November 18, 2008, (73 FR 68365), to solicit public comments regarding 14 categories of information related to tunnel inspections to help FHWA develop the National Tunnel Inspection Standards (NTIS). The FHWA received comments on the docket from 20 commenters, including: 9 State DOTs (Alaska, California, Massachusetts, Oregon, Ohio, Pennsylvania, New Jersey, Florida, and Washington); 1 metropolitan transit authority (Triborough Bridge and Tunnel Authority/Metropolitan Transit Authority Bridges and Tunnels (TBTA/MTA); 3 engineering consulting firms (United Technologies Corporation (UTC), Jacobs Associates, and PB Americas); 2 private citizens; and 4 organizations (American Society of Civil Engineers (ASCE), American Association of State Highway Transportation Officials (AASHTO), American Council of Engineering Companies (ACEC), and National Fire Protection Association (NFPA). Additionally, in a letter to Secretary LaHood, Congressman Joseph Capuano of Massachusetts expressed support for the development of NTIS. Commenters overwhelmingly supported the development of NTIS.

FHWA has prepared a Notice of Proposed Rule Making (NPRM) for the NTIS to address comments received to the ANPRM. The NPRM is being reviewed internally and FHWA intends to publish it soon.

A preliminary tunnel survey conducted in 2003 suggests that there are approximately 350 highway tunnels in the Nation, although no comprehensive national inventory for tunnels currently exists. The FHWA additionally estimates that tunnels represent nearly 100 linear miles, (approximately 517,000 linear feet) of Interstates, State routes, and local routes. Most of these tunnels range in age from 51 to 100 years, and some tunnels were constructed in the 1930s and 1940s. The FHWA anticipates that the NTIS would create a National Inventory of Tunnels (NTI) that would lead to a more accurate assessment of the number and condition of tunnels in the Nation.

The following is the data that will be collected under the NTI on a form FHWA is developing:

(1) Basic tunnel information. Tunnel name; tunnel number; owner; operator; tunnel location, including State, county, or political subdivision, route designation, Strategic Highway Network designation, portals milepost, portals latitude and longitude; year tunnel construction completed; traffic data, including posted speed, design speed, current average daily traffic, and percentage of truck traffic; and date of last inspection).

(2) Tunnel and roadway geometrics. Number of bores; total number of lanes; direction of traffic (*e.g.,* uni-directional, bi-directional, variable); portal-to-portal tunnel length; maximum open tunnel height within travelway; minimum posted vertical clearance; minimum cross-sectional width; lane width(s); shoulder width(s); and pavement type.

(3) Interior tunnel structural features. Tunnel shape (*e.g.,* circular, rectangular, horseshoe, oval); ground conditions (*e.g.,* soft ground, soft rock, hard rock, mixed face); ceiling type (*e.g.,* structural lining, integral box, suspended panel); finish lining type (*e.g.,* tiles, metal panels, precast panels, masonry block, shotcrete or gunite, coating or paint); and primary tunnel support lining.

(4) Portal structural features. Portal types (*e.g.,* cast-in place or precast concrete, stone masonry, bare rock); and portal shapes (*e.g.,* circular, rectangular, horseshoe, oval).

(5) Preliminary assessment of tunnel condition.

Currently States are inspecting their tunnels but they are not required to report to FHWA their findings of those inspections. Therefore, FHWA feels that the additional burden on the States to report this data will be very minimal. The estimated burden on the States to collect, manage, and report this data is assumed to be 8 hours per tunnel for a total estimate of 2,808 hours for all 350 estimated tunnels in the Nation. This represents an average of 54 hours per responder.

Respondents: 50 States, District of Columbia, and Puerto Rico (52 total).

Frequency: Annually.

Estimated Average Burden per Response: Approximately 54 hours per participant.

Estimated Total Annual Burden Hours: Approximately 2,808.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: June 7, 2010.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2010–14134 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0078]

Commercial Driver's License (CDL) Standards; Rotel North American Tours, LLC; Application for Renewal of Exemption; Request for Comments

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for renewal; request for comments.

SUMMARY: FMCSA announces that Rotel North American Tours, LLC (Rotel), has applied for renewal of its current exemption permitting 22 named drivers, employed by Rotel and possessing German CDLs, to operate commercial motor vehicles (CMVs) in the United States without a CDL issued by one of the States. Rotel asks that the current exemption, due to expire on July 30, 2010, be renewed subject to the terms and conditions of the current exemption for an additional period of 2 years.

DATES: Comments must be received on or before July 14, 2010.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2008–0078 by any of the following methods:

Web site: Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number 2008–0078. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to the street address listed above, or go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of the dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://DocketInfo.dot.gov.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Robert Schultz, Jr., FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption application in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the application.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Rotel provides motorcoach tours in the U.S., Mexico and Canada for German and Austrian tourists. Rotel bus drivers operate the CMV during the day. They also prepare dinner and breakfast for the customers each day during the trip; Rotel CMVs incorporate cooking and sleeping facilities.

Rotel states that none of the States of the U.S. will issue CDLs to Rotel's drivers because they are not State residents; until recent years, most States would issue non-resident CDLs to Rotel's drivers. Rotel asserts that without the exemption from the requirement that its drivers have a CDL issued by a State, it would have to terminate these tour operations. Complete details of Rotel's operations, including its original application for exemption dated August 27, 2007, can be found in the docket of this notice.

On July 30, 2008, after notice and comment, FMCSA granted Rotel's request to allow 22 drivers, each holding a German CDL, to operate Rotel motor coaches in the U.S. without a CDL issued by one of the States as required by 49 CFR 383.23. FMCSA found that these drivers, operating specialty tour buses in the U.S., would "likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption," in accordance with 49 CFR 381.305. The two-year exemption expires on July 30, 2010.

Rotel's Request for Renewal

By letter dated December 21, 2009, Rotel applied for renewal of its current exemption from the requirement that operators of CMVs obtain a CDL from one of the States. The letter is available in the docket for this notice. Rotel asks that the 22 individuals who are currently exempt continue to be exempt from the CDL licensing requirement of 49 CFR 383.23 for an additional 2 years. Each of these individuals is a non-resident of the U.S., a holder of a valid German CDL, and an experienced CMV operator. The drivers are, as follows:

Josef Dangl	Rudolf Ramsl
Reinfried Dangl	Paul Schlögl
Herbert Erber	Walter Schreiner
Helmut Erbersdobler	Josef Stockinger
Wilhelm Fuchs	Josef Vogl

Peter Hess	Klaus Weber
Michael Huber	Markus Wölfl
Gerhard Kinateder	Norbert Zechmesiter
Hermann Lichtenauer	Klaus Endres
Franz Manzinger	Sebastian Nicki
Fabian Maurer	Karl-Heinz Schmitz

Rotel believes these drivers continue to possess sufficient knowledge, skills, and experience to ensure a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the requirement for a U.S. CDL. If the Agency determines that this application for renewal should be granted, the Rotel drivers would be subject to the terms and conditions of the current Rotel exemption.

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on Rotel's request for renewal of its exemption to allow the 22 Rotel CDL drivers named above to continue to be exempt from 49 CFR 383.23 from July 31, 2010, through July 31, 2012. FMCSA will consider all comments received by close of business on July 14, 2010. All comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: June 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14223 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25756]

Commercial Driver's License (CDL) Standards; Volvo Trucks North America, Inc.'s Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant Volvo Trucks North America, Inc.'s (Volvo) application for an exemption for two Volvo drivers to drive commercial motor vehicles (CMVs) in the United States without possessing the requisite CDL issued by one of the States. Magnus Ericsson and Conny Harlin are part of a team of Volvo engineers and technicians test-driving Volvo prototype CMVs in U.S. environments. Each of these drivers holds a valid Swedish CDL but lacks the U.S. residency necessary to obtain a CDL issued by one of the States of the U.S. FMCSA believes the rigorous training and testing that drivers must undergo to obtain a Swedish CDL, and the excellent safety record of both of these drivers, ensure that these drivers will likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption.

DATES: This exemption is effective April 16, 2010 and expires on April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR part 350 *et seq.*) for up to 2 years. The Agency must find that the exemption will allow the applicant to implement more effective or efficient operations and "would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" (49 CFR 381.305(a)). Exemptions are renewable.

The FMCSA has granted comparable exemptions for Volvo drivers in the past. The most recent Agency notice of final disposition was published on May 5, 2009, granting exemption for the same purpose to seven Volvo drivers with Swedish CDLs (74 FR 20778).

Volvo Application for Exemption

Volvo applied for exemption for drivers Magnus Ericsson and Conny Harlin from 49 CFR 383.23 of the CDL rules, requiring drivers operating CMVs to have a CDL issued by one of the States. A copy of the request for exemption is in the docket identified at the beginning of this notice. This exemption is necessary for these drivers to be qualified to drive CMVs in the United States. The Volvo CMVs in question are assembled, sold or primarily used in the United States, and must be subjected to various field tests in this country before being placed on the U.S. market. The tests are conducted by Volvo engineers and technicians at Volvo's U.S. test site and on public roads in the vicinity of Phoenix, Arizona. The vehicle safety and performance data drawn from the test-driving is a critical component of the overall evaluation of a prototype.

Section 383.21 requires drivers of CMVs in the United States to have a CDL issued by a State. Ericsson and Harlin are citizens and residents of Sweden. Only residents of a State can apply for a CDL,[1] so Ericsson and Harlin cannot apply for a CDL in this country. Without the exemption, Ericsson and Harlin would not be able to test-drive Volvo prototype CMVs on U.S. roads.

Ericsson and Harlin hold Swedish CDLs and are experienced operators of CMVs. In addition, Volvo submitted documentation showing that the Swedish driving records of both Ericsson and Harlin are free of violations.

Method To Ensure an Equivalent or Greater Level of Safety

According to Volvo, drivers applying for a Swedish-issued CDL must undergo a training program and must pass knowledge and skills tests. Volvo believes that the rigor of this process ensures that this exemption will likely provide a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL. FMCSA has previously determined that the process for obtaining a CDL in Sweden adequately assesses the driver's ability to operate CMVs in the U.S., and is comparable to, or as effective as, the process for obtaining a CDL issued by a State.

Comments

No comments were received in response to an FMCSA notice of this application and request for comments, published on January 19, 2010 (75 FR 2921).

FMCSA Decision

Based upon the merits of this application, including the extensive driving experience and unblemished safety records of Magnus Ericsson and Conny Harlin, and the rigorous training and testing each successfully completed to obtain a Swedish CDL, FMCSA concluded that the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption, in accordance with 381.305(a). On April 16, 2010, FMCSA granted an exemption from 49 CFR

[1] Although 49 CFR 383.23 indicates that these drivers could obtain a Nonresident CDL, few States—if any—are currently issuing Nonresident CDLs.

383.23 to Volvo drivers Magnus Ericsson and Conny Harlin for the period from April 16, 2010 through April 16, 2012.

Terms and Conditions for the Exemption

FMCSA granted Volvo an exemption from the Federal CDL requirement in 49 CFR 383.23 to allow Ericsson and Harlin to drive CMVs in the U.S., subject to the following terms and conditions:

(1) That the drivers are subject to drug and alcohol regulations, including testing, as provided in 49 CFR part 382, (2) that the drivers are subject to the same driver disqualification rules under 49 CFR parts 383 and 391 that apply to other CMV drivers in the U.S., (3) that the drivers keep a copy of the exemption on the vehicle at all times, (4) that Volvo notify FMCSA in writing of any accident, as defined in 49 CFR 390.5, involving one or both of these drivers, and (5) that Volvo notify FMCSA in writing if either driver is convicted of a disqualifying offense under section 383.51 or section 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) An exempted driver fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would be inconsistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: May 28, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14270 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2006–25756]

Commercial Driver's License (CDL) Standards; Volvo Trucks North America, Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA renews Volvo Trucks North America's (Volvo) exemption from the Agency's requirement for certain drivers of commercial motor vehicles (CMVs) to hold a commercial driver's license (CDL). Volvo requested that its exemption for five Swedish engineers and technicians be renewed to enable these individuals to continue test-driving CMVs in the United States for Volvo. Each of these individuals holds a valid Swedish CDL. FMCSA believes the training program and knowledge and skills testing that drivers must undergo to obtain a Swedish CDL ensure a level of safety equivalent to, or greater than, the level of safety that would be obtained by complying with the U.S. requirement for a CDL.

DATES: Comments must be received on or before July 14, 2010.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2006–25756 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* In the ENTER KEYWORD OR ID box enter FMCSA–2006–25756 and click on the tab labeled SEARCH. On the ensuing page, click on any tab labeled SUBMIT A COMMENT on the extreme right of the page and a page should open that is titled "Submit a Comment." You may identify yourself under section 1, ENTER INFORMATION, or you may skip section 1 and remain anonymous. You enter your comments in section 2, TYPE COMMENT & UPLOAD FILE. When you are ready to submit your comments, click on the tab labeled SUBMIT. Your comment is then submitted to the docket; and you will receive a tracking number.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, and in the ENTER KEYWORD OR ID box enter FMCSA–2006–25756 and click on the tab labeled SEARCH.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov.*

Public Participation: The www.regulations.gov Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the www.regulations.gov Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the CDL requirements of 49 CFR 383.23 for a maximum 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

Volvo Application for Exemption Renewal

Volvo applied for the renewal of an exemption from 49 CFR 383.23, the commercial driver licensing requirement for drivers operating commercial motor vehicles (CMVs). A copy of the request for renewal is in the docket identified at the beginning of this notice. Volvo asked for the renewal of exemption for five drivers for an additional period of 2 years. The five drivers are Jonas Gustafsson, Christer Milding, Jonas Nilsson, Bjorn Nyman, and Sten-Ake Sandberg.

FMCSA initially granted this exemption to Volvo for 11 Swedish

engineers and technicians on May 12, 2006 (71 FR 27780). Detailed information about the qualifications and experience of each of the 11 drivers, including the 5 drivers who are the subject of this notice, was provided by Volvo in its original application, a copy of which is in the docket referenced above. On February 4, 2008, Volvo's request for renewal of the exemption for 8 of the original 11 exempt individuals was approved for an additional period of 2 years (73 FR 6552). FMCSA has evaluated Volvo's current application for renewal of 5 of the 8 individuals on its merits and decided to grant renewal of this Volvo exemption for an additional 2-year period, i.e. from February 4, 2010, through February 4, 2012.

Volvo is seeking a renewal of this exemption because the drivers it employs are citizens and residents of Sweden, and cannot easily obtain non-resident CDLs, given the small number of States willing to issue such license. Renewal of the exemption will enable the five drivers to operate CMVs in the U.S. and continue to support Volvo's field tests to meet future clean air standards, to test drive prototype vehicles at their test site, and to deliver the vehicles, if necessary. It is estimated that each driver will drive approximately 2,500 miles per year on U.S. roads. Each of the 5 drivers is an experienced CMV operator holding a valid Swedish-issued CDL. Each driver has received extensive CMV training, and has satisfied strict regulations in Sweden in order to obtain a CDL. Volvo explained in detail in earlier exemption requests in this docket the rigorous training program, and knowledge and skills tests, that applicants for a Swedish CDL must undergo. Volvo also stated in prior exemption requests that it believes that the knowledge and skills tests and training program ensure the exemption provides a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the U.S. requirement for a CDL.

Method To Ensure an Equivalent or Greater Level of Safety

FMCSA has previously determined the process for obtaining a Swedish CDL is comparable to, or as effective as, the Federal requirements of Part 383, and adequately assesses the driver's ability to operate CMVs in the U.S. In the past 2 years, FMCSA has published several notices of similar Volvo exemption requests; the most recent Agency notice of final disposition was published on May 5, 2009, granting an exemption to seven Volvo drivers for two years (74 FR 20778).

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on the renewal of Volvo's exemption from the requirements of 49 CFR 383.23 for these five individuals. The Agency requests that interested parties with specific data concerning the safety records of the five drivers listed in this notice submit comments by July 14, 2010. FMCSA will review all comments received by this date and determine whether renewal of the exemption is consistent with the requirements of 49 U.S.C. 31315 and 31136(e).

FMCSA believes the requirements for renewal of an exemption under 49 U.S.C. 31315 and 31136(e) can be satisfied by initially granting the renewal and then requesting and subsequently evaluating comments submitted by interested parties. As indicated above, on two prior occasions, the Agency has determined that providing exemption for these five Volvo drivers from the CDL requirements of 49 CFR 383.23 does not compromise the level of safety that would exist if the exemption were not granted. Each of the prior FMCSA decisions was based on careful consideration of the comments received, and on the merits of each driver's demonstrated knowledge and skills about the safe operation of CMVs.

Interested parties or organizations possessing information that would show that any or all of these drivers are not currently achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse information submitted and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will take immediate steps to revoke the exemption of the driver(s) in question.

Issued on: June 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14264 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0027]

Hours of Service of Drivers: RockTenn, Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from RockTenn requesting an exemption from the driver hours-of-service (HOS) provisions in Part 395 of the Federal Motor Carrier Safety Regulations. The exemption request is for RockTenn's shipping department employees and occasional substitute commercial driver's license (CDL) holders who transport paper mill products between their shipping and receiving locations on a public road. RockTenn requests this exemption to allow these individuals to work up to 16 hours per day and be allowed to return to work with less than the mandatory 10 consecutive hours off-duty. FMCSA requests public comment on the RockTenn application for exemption.

DATES: Comments must be received on or before July 14, 2010.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2010–0027 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to http://*www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://*

www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://DocketInfo.dot.gov.*

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from motor carrier safety regulations. Under its regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for denying or, in the alternative, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which the exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

Under 49 CFR 395.3(a)(2), a property-carrying commercial motor vehicle (CMV) driver is prohibited from operating a CMV on a public road after having been on duty for 14 consecutive hours following 10 or more consecutive hours off duty. Once an individual has reached the end of this 14 consecutive-hour period, he or she cannot drive a CMV again without taking a minimum of 10 consecutive hours off duty.

RockTenn operates a paper mill located in Chattanooga, Tennessee, their principal place of business. Their shipping and receiving departments are on opposite sides of the paper mill, requiring their employees/drivers to travel on a public road to shuttle trailers as needed. These individuals utilize this public road (Compress Street) an average of forty times per day to go from their shipping to receiving department and to load their trailers in the shipping department. RockTenn notes that its drivers do not transport any material farther than its paper mill lots and/or Compress Street. The distance traveled on Compress Street is approximately 275 feet in one direction, and one tractor is used to perform this work. Included in RockTenn's application are pictures and a line drawing that specifically illustrates this distance traveled by these drivers.

RockTenn currently requires all shipping department employees to have the required 10 hours off duty prior to returning to work and only allows them to work a maximum of 14 consecutive hours on any given day. They have three 8-hour shifts up to 7 days a week, and there are two shipping employees on each shift. One employee drives a fork-lift truck loading trailers with finished goods, and the other operates the tractor shuttling trailers. RockTenn states that these employees do not drive the CMV continuously during their shift(s).

According to RockTenn, the problem arises on a Monday, for example. If an individual worked the weekend, two of his or her shifts would normally have to "hurry back" within 8 hours. As a result of the mandatory 10 hours off-duty requirement, RockTenn schedules these drivers' shifts to start later than other employees. This creates at least 2 hours when the company cannot load or transport trailers with finished goods due to the absence of the drivers. Furthermore, as a result of the maximum 14 consecutive-hour duty period rule (49 CFR 395.3(a)(2)), they may "work short," creating on-time delivery issues for other employees in the department, as they are not allowed to work an entire "double shift" (16 hours).

RockTenn requests an exemption from 49 CFR part 395 for their shipping department employees, as well as others with a valid CDL who on occasion must substitute, allowing all such drivers to work up to 16 hours in a day and return to work with a minimum of at least 8 hours of rest. By waiving the normal hours of service requirement, these employees can follow the same work schedule as other RockTenn employees on their shift, and will be able to take advantage of the full 16 hours of a "double shift." RockTenn can therefore minimize the chances of delayed shipments that can occur when their employees are allowed to work a normal schedule. In its application, RockTenn provided a list of around 11 "approved" CDL drivers working in the shipping department who would be covered by the exemption.

RockTenn acknowledges in its application that these drivers would still be subject to all of the other Federal rules and regulations, including possessing a CDL, random drug testing, medical certification, and other driver-qualification requirements. RockTenn, however, does not specifically advise how they would ensure that the exemption would provide a level of safety that is equivalent to, or greater than, the level of safety obtained by complying with the Federal hours-of-service regulations.

A copy of the RockTenn exemption application is available for review in the docket identified earlier in this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on the RockTenn application for an exemption from the provisions of 49 CFR part 395. The Agency will consider all comments received in the public docket by close of business on July 14, 2010, and those after the closing date of the comment period to the extent practicable. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Issued on: June 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14274 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0166]

Parts and Accessories Necessary for Safe Operation; Applications for an Exemption From Con-Way Freight, TK Holdings, Inc., and Iteris, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA requests public comment on applications for exemption from Con-way Freight (Con-way), TK Holdings, Inc. (Takata), and Iteris, Inc. (Iteris) regarding the placement of lane departure warning system sensors at the top of the windshields of commercial motor vehicles (CMVs). Each applicant requests that FMCSA permit the mounting of the lane departure warning system sensors near the top of the windshield, and within the swept area of the windshield wipers, which is currently prohibited by the Agency's regulations. The lane departure warning system would be used to alert a driver when he or she unintentionally drifts out of their lane of travel, thus promoting improved safety performance of CMV drivers. Each applicant contends that this mounting position does not adversely impact driver visibility.

DATES: Comments must be received on or before July 14, 2010.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2010–0166 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the "Privacy Act" heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may *visit http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Applications for Exemption

On November 11, 2009, Con-way applied for an exemption from 49 CFR 393.60(e)(1) to allow it to install lane departure waning system sensors on 1,272 of its newly purchased power units. Takata and Iteris submitted nearly identical exemption applications on December 15, 2009 and on February 25, 2010, respectively. Copies of each of the applications are included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1) of the FMCSRs prohibits the obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas, transponders and similar devices (devices) must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers and outside the driver's sight lines to the road and highway signs and signals.

Each of the applicants note that over the past several years, FMCSA has collaborated with the trucking industry to test, evaluate, and encourage the deployment of several promising onboard safety systems for CMVs in an effort to enhance the safety of all roadway users. From a motor carrier perspective, Con-way states that it would like to make an investment in

three of these safety systems—forward collision waning systems, roll stability control systems, and lane departure warning systems, on its newly purchased power units. From a supplier perspective, both Takata and Iteris would like to ensure that motor carriers are able to utilize the safety systems that they manufacture, to enhance highway safety, while maintaining compliance with the applicable FMCSRs.

The applicants note that the lane departure warning system requires, as a necessary element, a lane departure warning sensor to be installed to the inside of the tractor windshield. For the warning sensor to be effective, it must be mounted inside the area swept by the windshield to insure maximum visibility.

The applicants state that over the last several years, truck manufacturers have increased the windshield area to maximize driver visibility. As a result, manufacturers have voluntarily installed larger windshield wipers on these windshields that increase the swept area beyond that which is minimally required by Federal Motor Vehicle Safety Standard (FMVSS) No. 104, "Windshield Wiping and Washing Systems." FMVSS No. 104 establishes the requirements applicable to vehicle and equipment manufacturers for windshield wiper system coverage for passenger cars, multi-purpose passenger vehicles, trucks and buses.

In the exemption applications, the applicants provided diagrams and photos showing the sensor dimensions and mounting location on the windshield. Specifically, the sensor device itself measures 2 inches by 3.5 inches, and it is mounted approximately 2 inches below the top of the windshield—within the 6-inch limit specified in 49 CFR 393.60(e)(1). The applicants state that this mounting position does not adversely impact the driver's visibility.

In support of the exemption applications, each applicant cited the findings of a report published by FMCSA's Office of Analysis, Research and Technology titled "Benefit-Cost Analyses of Onboard Safety Systems," that summarizes the projected safety benefits for various CMV onboard safety systems, including lane departure warning systems. Using low and high estimates of efficacy rates ranging from 23 percent to 53 percent, the report estimated that, based on industry-wide use of lane departure warning systems, these systems have the potential to reduce approximately 1,609–2,463 single-vehicle roadway departure collisions, 627–1,307 single-vehicle roadway departure rollovers, 1,111–2,223 same-direction lane departure sideswipes, 997–1,992 opposite-direction lane departure sideswipes, and 59–118 opposite-direction lane departure head-on collisions. The applicants state that without the exemption, motor carriers will be unable to (1) implement the lane departure warning system, and (2) realize the potential safety benefits that can be expected with the utilization of this technology as estimated in the report described above.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the applications for an exemption from 49 CFR 393.116(a)(3) submitted by Conway, Takata, and Iteris. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14222 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0177]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From the Flatbed Carrier Safety Group

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on an application for exemption from the Flatbed Carrier Safety Group (FCSG) regarding the securement of metal coils on a flatbed vehicle, in a sided vehicle, or in an intermodal container loaded with eyes crosswise, grouped in rows, in which the coils are loaded to contact each other in the longitudinal direction. FCSG wants to use the pre-January 1, 2004 cargo securement regulations for the transportation of groups of metal coils with eyes crosswise.

DATES: Comments must be received on or before July 14, 2010.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2008–0224 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. *e.t.,* Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, *see* the "Public Participation" heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the "Privacy Act" heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit *http://www.regulations.gov.*

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the *http://www.regulations.gov* Web

site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want us to notify you that we received your comments, please include a self addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

FCSG's Application for Exemption

On March 30, 2010, FCSG applied for an exemption from 49 CFR 393.120 to allow motor carriers to comply with the pre-January 1, 2004 cargo securement regulations (then at 49 CFR 393.100(c)) for the transportation of groups of metal coils with eyes crosswise. A copy of the application is included in the docket referenced at the beginning of this notice.

On September 27, 2002, FMCSA published a final rule revising the regulations concerning protection against shifting and falling cargo for commercial motor vehicles engaged in interstate commerce (reference 67 FR 61212). The new rules were based on the North American Cargo Securement Standard Model Regulations, the motor carrier industry's best practices, and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State, and Provincial enforcement officials, and other interested parties. Motor carriers were required to ensure compliance with the rule by January 1, 2004.

The September 2002 final rule established detailed requirements for a number of specific commodities (logs; dressed lumber; metal coils; paper rolls; concrete pipe; intermodal containers; automobiles, light trucks and vans; heavy vehicles, equipment and machinery; flattened and crushed vehicles; roll-on/roll-off containers; and large boulders) that, during the public meetings concerning the development of the model regulations, were identified to cause the most disagreement between industry and enforcement agencies as to what is required for proper securement. The commodity-specific requirements for these items take precedence over the general rules when additional requirements are given for a commodity listed in those sections. This means all cargo securement systems must meet the general requirements, except to the extent a commodity-specific rule imposes additional requirements that prescribe in more detail the securement method to be used.

Currently, section 393.120 of the FMCSRs specifies requirements for the securement of one or more metal coils which, individually or grouped together, weigh 5,000 pounds or more. Metal coils can be transported with eyes vertical, eyes lengthwise, or eyes crosswise.

(1) Section 393.120(b) specifies requirements for the securement of coils transported with eyes vertical. Specific requirements are provided for the securement of individual coils, and coils grouped in rows.

(2) Section 393.120(d) specifies requirements for the securement of coils transported with eyes lengthwise. Specific requirements are provided for the securement of individual coils, and rows of coils.

(3) Section 393.120(c) specifies requirements for the securement of coils transported with eyes crosswise as follows:

393.120(c) Securement of coils transported with eyes crosswise on a flatbed vehicle, in a sided vehicle or intermodal container with anchor points—(1) An individual coil. Each coil must be secured by the following:

(c)(1)(i) A means (*e.g.,* timbers, chocks or wedges, a cradle, etc.) to prevent the coil from rolling. The means of preventing rolling must support the coil off the deck, and must not be capable of becoming unintentionally unfastened or loose while the vehicle is in transit. If timbers, chocks or wedges are used, they must be held in place by coil bunks or similar devices to prevent them from coming loose. The use of nailed blocking or cleats as the sole means to secure timbers, chocks or wedges, or a nailed wood cradle, is prohibited;

(c)(1)(ii) At least one tiedown through its eye, restricting against forward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container; and

(c)(1)(iii) At least one tiedown through its eye, restricting against rearward motion, and whenever practicable, making an angle no more than 45 degrees with the floor of the vehicle or intermodal container when viewed from the side of the vehicle or container.

(c)(2) Prohibition on crossing of tiedowns when coils are transported with eyes crosswise. Attaching tiedowns diagonally through the eye of a coil to form an X-pattern when viewed from above the vehicle is prohibited.

Unlike the requirements for securing coils with eyes vertical (section 393.120(b)) and eyes lengthwise (section 393.120(d)), section 393.120(c) only specifies requirements for the securement of *individual* coils; there are no specific requirements for securing *rows of coils.* As such, a motor carrier transporting a row of coils with eyes crosswise must treat each coil as an individual coil, and secure each in accordance with the requirements outlined in section 393.120(c) as above.

Whereas the current commodity-specific regulations at section 393.120 for securing metal coils do not address the securement of groups of coils loaded with eyes crosswise, FCSG notes that the cargo securement regulations that were in place prior to January 1, 2004 directly addressed this specific loading configuration. Section 393.100(c) of the pre-January 2004 cargo securement rules reads as follows:

393.100(c)(ii) *Coils with eyes crosswise:* Each coil or transverse row of coils loaded side by side and having approximately the same outside diameters must be secured by—

(*a*) A tiedown assembly through the eye of each coil, restricting against forward motion and making an angle of less than 45° with the

horizontal when viewed from the side of the vehicle;

(*b*) A tiedown assembly through the eye of each coil, restricting against rearward motion and making an angle of less than 45° with the horizontal when viewed from the side of the vehicle; and

(*c*) Timbers, having a nominal cross section of 4 x 4 inches or more and a length which is at least 75 percent of the width of the coil or row of coils, tightly placed against both the front and rear sides of the coil or row of coils and restrained to prevent movement of the coil or coils in the forward and rearward directions.

(d) If coils are loaded to contact each other in the longitudinal direction and relative motion between coils, and between coils and the vehicle, is prevented by tiedown assemblies and timbers—

(1) Only the foremost and rearmost coils must be secured with timbers; and

(2) A single tiedown assembly, restricting against forward motion, may be used to secure any coil except the rearmost one, which must be restrained against rearward motion. [Emphasis added]

FCSG states without the temporary exemption, adherence to the existing regulations at 393.120(c) for the securement of rows of coils loaded with eyes crosswise—*i.e.,* treating each coil as an individual coil—places a burden on the motor carrier to carry significantly more coil bunks and timbers to secure each coil in a raised bunk off the deck. If permitted to secure loads of coils with eyes crosswise in rows in which the coils are loaded to contact each other in the longitudinal direction, FCSG states that because the coils are grouped and secured together, *i.e.,* ''unitized,'' there is no additional safety benefit to justify the additional coil bunks and timbers. FCSG states that securing groups of coils in this manner allows the load to be unitized in a secure manner while still meeting all of the aggregate working load limit requirements of 49 CFR 393.106(d).

FCSG notes that it intends to work cooperatively with the North American Cargo Securement Harmonization Forum to effect these changes in the North American Cargo Securement Model Regulation, which is the document that both the U.S. and Canada have committed to use to update the cargo securement requirements in both the FMCSRs and the Canadian National Safety Code. FCSG states that this will enable CMV operators to continue to secure groups of coils with eyes crosswise in a manner that unitizes adjacent coils and was previously deemed adequate and secure prior to the January 2004 revisions to the cargo securement regulations.

For the reasons stated above, FCSG requests that motor carriers be permitted to secure metal coils loaded with eyes crosswise, in rows in which the coils are loaded to contact each other in the longitudinal direction, in accordance with the pre-January 2004 cargo securement requirements (then 393.100(c)) instead of using the current requirements of 393.120(c) which effectively require each coil in a row of coils to be treated as an individual coil for the purposes of securement. While the current commodity-specific regulations for the securement of metal coils at 49 CFR 393.120 specify the securement requirements for *individual* coils loaded with eyes crosswise, these regulations do not provide guidance regarding the securement of coils with eyes crosswise, *grouped in rows,* in which the coils are loaded to contact each other in the longitudinal direction. FCSG is making this request because it believes that utilization of the pre-January 2004 regulations—which specifically addressed coils transported with eyes crosswise, grouped in rows, in which the coils are loaded to contact each other in the longitudinal direction—will maintain a level of safety that is equivalent to the level of safety achieved without the exemption.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on FCSG's application for an exemption from 49 CFR 393.120. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14224 Filed 6–11–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 7, 2010.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before July 14, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–2036

Type of Review: Extension without change of a currently approved collection.

Title: Taxation and Reporting of REIT Excess Inclusion Income (Notice 2006–97).

Abstract: The notice requires certain REITs, RICs, partnerships and other Pass-Through Entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 100 hours.

OMB Number: 1545–0735

Type of Review: Extension without change of a currently approved collection.

Title: LR–189–80 (T.D. 7927) Final Amortization of Reforestation Expenditures

Abstract: 26 U.S.C. 194(a) allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Service to determine if the election is proper and allowable.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 6,001 hours.

OMB Number: 1545–1219

Type of Review: Revision of a currently approved collection.

Title: Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate.

Form: 8038–T

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. These issuers include state and local governments.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 57,900 hours.

OMB Number: 1545–1300

Type of Review: Extension without change of a currently approved collection.

Title: FI–46–89 (T.D. 8641) (Final) Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

Abstract: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 2,200 hours.

OMB Number: 1545–1580

Type of Review: Extension without change of a currently approved collection.

Title: REG–105885–99 (T.D. 9075) (Final), Compensation Deferred Under Eligible Deferred Compensation Plans.

Abstract: REG–105885–99 and T.D. 1580 provides guidance regarding the trust requirements for certain eligible deferred compensation plans enacted in the Small Business Job Protection Act of 1996.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 10,600 hours.

OMB Number: 1545–0057

Type of Review: Extension without change of a currently approved collection.

Title: Application for Recognition of Exemption Under Section 501(a).

Form: 1024

Abstract: Organizations seeking exemption from Federal Income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 291,542 hours.

OMB Number: 1545–0962

Type of Review: Extension without change of a currently approved collection.

Title: Tax Information Security Guidelines for Federal, State, and Local Agencies.

Abstract: Internal Revenue Code section 6103(p) requires that IRS provide periodic reports to Congress describing safeguard procedures, utilized by agencies which receive information from the IRS, to protect the confidentiality of the information. This section also requires that these agencies furnish reports to the IRS describing their safeguards.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 204,000 hours.

OMB Number: 1545–2034

Type of Review: Revision of a currently approved collection.

Title: U.S. Partnership Declaration for an IRS e-file Return.

Form: 8453–PE

Abstract: Form 8453–PE, U.S. Partnership Declaration for an IRS e-file Return, was developed for Modernized e-file for partnerships. Internal Revenue Code sections 6109 and 6103.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,660 hours.

OMB Number: 1545–2080

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2010–9.

Abstract: This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2010–6, 2010–1 I.R.B. 193 (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 200 hours.

Bureau Clearance Officer: R. Joseph Durbala, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224; (202) 622–3634.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–14166 Filed 6–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2032

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2032, Contract Coverage Under Title II of the Social Security Act.

DATES: Written comments should be received on or before August 13, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Contract Coverage Under Title II of the Social Security Act.

OMB Number: 1545–0137.

Form Number: 2032.

Abstract: Citizens and resident aliens employed abroad by foreign affiliates of American employers are exempt from

social security taxes. Under Internal Revenue Code section 3121(1), American employers may file an agreement to waive this exemption and obtain social security coverage for U.S. citizens and resident aliens employed abroad by their foreign affiliates. Form 2032 is used for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time per Respondent: 6 hours, 48 minutes.

Estimated Total Annual Burden Hours: 973.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14138 Filed 6–11–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–106917–99]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–106917–99 (TD 8996), Changes in Accounting Periods (Sec. 1.441–2, 1.442–1, and 1.1378–1).

DATES: Written comments should be received on or before August 13, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Accounting Periods.

OMB Number: 1545–1748.

Regulation Project Number: REG–106917–99.

Abstract: Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53-week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2010.

Gerald Shields,

IRS Reports Clearance Officer.

[FR Doc. 2010–14139 Filed 6–11–10; 8:45 am]

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H.R. 2711/P.L. 111–178
Special Agent Samuel Hicks Families of Fallen Heroes Act (June 9, 2010; 124 Stat. 1262)

H.R. 3250/P.L. 111–179
To designate the facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, as the ''Private First Class Garfield M. Langhorn Post Office Building''. (June 9, 2010; 124 Stat. 1264)

H.R. 3634/P.L. 111–180
To designate the facility of the United States Postal Service located at 109 Main Street in Swifton, Arkansas, as the ''George Kell Post Office''. (June 9, 2010; 124 Stat. 1265)

H.R. 3892/P.L. 111–181
To designate the facility of the United States Postal Service located at 101 West Highway 64 Bypass in Roper, North Carolina, as the ''E.V. Wilkins Post Office''. (June 9, 2010; 124 Stat. 1266)

H.R. 4017/P.L. 111–182
To designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the ''Ann Marie Blute Post Office''. (June 9, 2010; 124 Stat. 1267)

H.R. 4095/P.L. 111–183
To designate the facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, as the ''Congresswoman Jan Meyers Post Office Building''. (June 9, 2010; 124 Stat. 1268)

H.R. 4139/P.L. 111–184
To designate the facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, as the ''Sergeant Matthew L. Ingram Post Office''. (June 9, 2010; 124 Stat. 1269)

H.R. 4214/P.L. 111–185
To designate the facility of the United States Postal Service located at 45300 Portola Avenue in Palm Desert, California, as the ''Roy Wilson Post Office''. (June 9, 2010; 124 Stat. 1270)

H.R. 4238/P.L. 111–186
To designate the facility of the United States Postal Service located at 930 39th Avenue in Greeley, Colorado, as the ''W.D. Farr Post Office Building''. (June 9, 2010; 124 Stat. 1271)

H.R. 4425/P.L. 111–187
To designate the facility of the United States Postal Service located at 2-116th Street in North Troy, New York, as the ''Martin G. 'Marty' Mahar Post Office''. (June 9, 2010; 124 Stat. 1272)

H.R. 4547/P.L. 111–188
To designate the facility of the United States Postal Service located at 119 Station Road in Cheyney, Pennsylvania, as the ''Captain Luther H. Smith, U.S. Army Air Forces Post Office''. (June 9, 2010; 124 Stat. 1273)

H.R. 4628/P.L. 111–189
To designate the facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, as the ''Sergeant Christopher R. Hrbek Post Office Building''. (June 9, 2010; 124 Stat. 1274)

H.R. 5330/P.L. 111–190

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes. (June 9, 2010; 124 Stat. 1275)

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